



LE
PRIMER RE-
PORT DES CASES
ET MATTERS EN LEY
resolues & adiudges en les Courts
del Roy en IRELAND.

Collect & digest per S.
JOHN DAVYS Chiualer, Attorney
Generall del Roy en cest
Realme.

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LONDON,
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John Davys was one of the members of the revived Society of Antiquaries in 1614. See Sten.
Leman's preface to his Law terms.

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Э Я БЫЛ
САМОСТОЯ-
ЧИЙ ГОРОД

College of the Holy Cross
Boston, Massachusetts

ANSWER SHEET

Approved by the Committee of
Supervision, 1458.

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TO THE RIGHT HONOVRABLE MY SINGVLAR GOOD *LORD, THOMAS LORD* ELLESMORE, LORD CHAN^C CELLOR OF ENGLAND.

KING Henry the second (my most honorable good Lord) was the first King of England after the *Norman Conquest*, that was stiled Lord of Ireland. Yet are there no Records of that Kings time remaining, wherby it may appeare, that he established any forme of ciuile gouernment in this land. But it is manifest by many recordes, and stories, that his sonne King *John* made the first diuision of Counties in Ireland, published the lawes of England, and commanded the due execution thereof in all those Counties which he had made, erected the Courts of Iustice, made the Standard of Irish moneys equall with the English: Briefely, he did order and settle the gouernment here in all points, according to the Modell of the Common-wealth of England. And to that end, when himselfe in person came ouer into Ireland the second time (which was in the twelfth yeare of his raigne) hee brought with him many learned persons in the lawe, and other Officers and Ministers of all sorts, to put the English lawes

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lawes in execution: whereof there is a notable record in the Tower of London, 11. Henr. 3. Patent. Membr. 3. agreeing with that which is related by *Math. Paris. histor. magn. fol. 220. b.*

After which time the records of all legall Acts and proceedings, namely the *Piperolls*, containing the charge of the revenue both *Certaine* and *Casuall*; the *Plearolls*, containing as well *Common Pleas*, as *Pleas of the Crowne*, *Parliament Rolls*, *Charters*, *Patents*, *Commissions*, & *Inquisitions*, were made vp in good form in euerie Kings time, the latter end of the raigne of King Henry the sixt, when by reason of the discension of the two Royall houses, the state of England neglecting the government of this Realme, the Clarks and Officers grewe also negligent in the execution of their feuerall places. And though many of those auncient recordes haue beene embezeled, and many haue perished by carelesse keeping, yet diuers of all sorts doe yet remaine, as faire and authentique, as any I haue seene in England. Howbeit during all the time that the lawes of England haue had their course in Ireland, which is now full foure hundred yeares, there hath not beene any Report made and published of any Case in lawe, argued, or adiudged in this Kingdome: but all the arguments and reasons of the iudgements and resolutions giuen in the Courts of Ireland, haue hitherto beene vtterly lost, and buried in obliuion.

Which seemeth to me the more strange, because there haue beene within this Realme, in euery age since the raigne of King John, men sufficiently learned in the lawes, who haue derived their learning out of the fountaines of lawe in England, the *Innes of Court* there (being the most flourishing and honourable Academy of Gentlemen, that euer was established in any nation, for the study and learning of the Municipall lawes thereof.) And therefore they might haue beene induced to imitate the learned men of England, who from the *Norman Conquest* downewards, did continually preserue the memory of such notable cases as did from time to time arise, and were argued and ruled in the Courts of Justice in England, by reducing the same into bookees of *Reports*, which may be called, and not improperly, the *Annalles of the lawe*.

For

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For albeit our *Reports* at large which are published in Print, do begin with the raigne of king *Edw. 3.* And the broken Cases of elder times, which are scattered in the *Abridgements*, are not found higher then the time of king *Henry 3.* yet assuredly there were other *Reports* digested in yeares and *Tearmes*, as ancient as the time of king *William the Conquerour*: as appeareth by that which *Chancery* writeth of the *Serjeant at law*:

*In Termes had he Cases and Doomes all,
That fro that time of King William were fall.*

Neither doth *Glanvill* or *Bracton* disaffirme this antiquity of the *Reports* of the lawe, in that they affirme that the law of England was *Ius non scriptum* in their times, as your Lordship hath noted in that most learned, graue, and prudent speech of yours, touching the *Postnati* of Scotland. For indeed those *Reports* are but Comments or interpretations vpon the Text of the *Common Law*: which Text was never originally written, but hath euer been preserued in the memory of men, though no mans memory can reach to the originall thereof.

For the *Common lawe* of England is nothing else but the *Common custome* of the Realnie: and a *custome* which hath obtained the force of a lawe, is alwayes said to be *Ius non scriptum*, for it cannot be made or created, either by Charter, or by Parliament, which are *Acts* reduced to writing, and are alwaies matter of *Record*, but being onely matter of *fact*, and consisting in vse and practise; it can be recorded and registred no where, but in the memory of the people.

For a *Custome* taketh beginning, and groweth to perfection in this manner: When a reasonable act once done, is found to be good and beneficall to the people, and agreeable to their nature and disposition, then do they vse it, and practise it, againe, and againe, and so by often iteration and multiplication of the act, it becommeth a *Custome*, and being continued without interruption time out of mind, it obtaineth the force of a *law*.

And this *Customary lawe* is the most perfect, and most excellent, and without comparison the best, to make and preserue a Common-wealth, for the *written lawes* which are made eyther by the edicts of Princes, or by Counsells of estate, are imposed vpon the Subiect before any Triall or Probation made, whether the same be fit and agreeable to the nature and disposition of the people, or whether they wil breed any inconuenience or

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no. But a *Custome* doth never become a lawe to bind the people, yntill it hath bin tried and approoued time out of mind, during all which time there did thereby arise no *inconuenience*, for if had beene found *inconuenient* at any time, it had bin vied no longer, but had beene interrupted, and consequently it had lost the vertue and force of a lawe.

Therefore as the *lawe of nature*, which the Schoolmen call *Ius commune*, and which is also *Ius non scriptum*, being written onely in the heart of man, is better then all the written lawes in the world to make men honest and happy in this life, if they would oiferue the rules thereof: So the *customary law* of England, which we doe likewise call *Ius commune*, as comming neerest to the lawe of *Nature*, which is the root and touchstone of all good lawes, and which is also *Ius non scriptum*, and written onely in the memory of man (for euery *custome* though it tooke beginning beyond the memory of any liuing man, yet it is continued and preserued in the memory of men liuing) doth far excell our *written* lawes, namely our Statutes or *Acts* of Parliament: which is manifest in this, that when our Parliaments haue altered or changed any fundamentall points of the Common lawe, those alterations haue beene found by experience to be so inconuenient for the Common wealth, as that the Common lawe hath in effect beene restored againe, in the same points, by other *Acts* of Parliament, in succeeding ages.

And as our *Customary unwritten* lawe doth excell our Parliament lawes, which are *written*, so for the government of the Common-weale of England (which is as well instituted and established as any Common-weale in Christendome.) Our native *Common lawe* is farre more apt and agreeable, than the *Civill* or *Cannon lawe*, or any other written lawe in the world besides: howsoeuer some of our Countrimen, who are *Cives in aliena Republica, & hospites in sua*, may perhaps affirme the contrary. But certaine it is, That the great and wise-men of England in the Parliament of *Merton* did not preferre a *Forreine* law before their owne, when motion being made by the Clergie, that children borne before Marriage might be adjudged legitimate, They all made answer with one voice, *Nolumus Leges Anglia matari*, And agayne in *11. R. 2.* when a new course of proceeding in Criminall Causes, according to the forme

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forme of the *Civile law* was propounded in that viruly Parliament, Answer was made by all the Estates, That the Realm of England neither had bin in former times, nor hereafter should be ruled and gouerned by the *Civile law*, *Res. Parl. 13. E. 2.* in *Archiv. Turrii*.

And here I may obserue for the Honour of our Nation, and of our Auncestours who have founded this Common-weale wherein we live, and enjoy so many felicities, That England hauing had a good and happy *Genius* from the beginning, hath beene inhabited alwaies with a vertuous and wise people, who euer embrac'd honest and good *Customes*, full of reson and conuenience; which being confirmed by common vse & practise, and continued time out of mind, became the *Common law* of the Land. And though this law bee the peculiar iugement of this Nation, and delivered over from age to age by *Tradition*; (for the common law of England is a *Tradition*, & learned by *Tradition* as well as by Bookes) yet may we truly say, That no human Law written or unwritten, hath more certaintie in the *Rules* and *Maximes*, more coherence in the parts thereof, or more harmonie of reason in it: nay, we may confidently auerre, That it doth excell all other lawes in upholding a free *Monarchie*, which is the most excellent forme of government, exalting the prærogative Royall, and being very tender and watchfull to preserue it, and yet maintaining withinne the ingenuous liberty of the subiect.

Briefely, it is so framed and fitted to the nature and disposition of this people, as we may properly say it is *conuenient* to the Nation, so as it cannot possibly be ruled by any other law. This Law therefore doth demonstrate the *strength of wit and reson*, and *selfe sufficiencie*, which hath binne alwayes in the People of this Land, which haue made their owne Lawes out of their wisedome and experience (like a filke-worme that formeth all her web out of her selfe only) not *beggynge* or *borrowynge* a forme of a common-weale, either from *Rome* or from *Greece*, as all other nations of *Europe* haue done, but haing sufficient prouision of law & justice within the land, haue no need *to send* *ad judicium ab aliigenis iudicant*, as King John wrote most nobly to Pope *Innocens the third*, *Mattib. Parviflavor. man. p. 2. 15. En populus sapiens & intelligentia gens magna*: as it is said of Gods chosen people, 4. *Dore*. Neither could any one manuer

An inscription found
at Luchinaway
Island

GENIO. Q

TERRÆ

BRITA

NNICAE.

George C. Gordon Stirling
MS. vol. 3. p. 358

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Et vixas Vixus in dictando
retundere et as te Virgil
Foot

vault, that like *Minos*, *Solon*, or *Lycurgus*, he was the first *Laws-*
giver to our Nation: for neither did the King make his owne
Prerogative, nor the Judges make the *Rules* or *Maximes* of the
law, nor the common subiect prescribe and limit the liberties
which he inioyeth by the Law. But as it is said of euerie *Art* or
Science which is brought to perfection, *Rer. varios usque artis*
experiencia fecit, so may it properly be said of our Law, *Per vno*
arios usque Legem experientia fecit: Long experience, and many
trials of what was best for the commongood, did make the
Common Law.

But vpon what reason then doth *Polidor Virgil* and other
Writers affirme, that *King William the Conqueror* was our *Law-*
giver, & caused all our laws to be written in *French*? Assuredly
the *Norman Conqueror* found the antient laws of England so
honorable and profitable both for the Prince & people, as that
he thought it not fit to make any alteration in the fundamental
points or substance thereof, the change that was made was
but *in formulis iuriis*: he altered some legall formes of proce-
ding, and to honor his owne language, and for a marke of con-
quest writhall, he caused the pleading of diuers Actions to bee
made and entred in *French*, and set forth his publike Ordinan-
ces and Acts of Connecell in the same tongue: which forme of
pleading in *French* continued till 36. Ed. 5. when (in regard that
the *French* tongue began to grow out of use, which for many
yeares after the *Norman Conquest* was as common as the *En-*
glisch among the *Genetrie* of England) it was ordained by Par-
liament, That all pleas should be pleaded, debated, & iudged in
the *English* tongue, and entred and enrolled in *Latine*. And as
for our Statutes or Acts of Parliament, the bills were for the
most part exhibited in *French*, and passed and enrolled in the
same language even till the time of *King H.7.* And so are they
printed in *Rastals* first *Abridgement* of Statutes, published in the
yere 1559. But after the beginning of *King Henry 7.* his reign,
we find all our Acts of Parliament recorded in *English*. Only
our *Reports* of the cases, resolutions, & judgments in the Law,
whereof our books of the Law do consist, have ever vntill this
day bin penned & published in that mixt kind of speech which
we call the *law French*, differing indeed not a little fro the *French*
tongue as it is now refined and spoken in *France*, as well by
reason of the wordes of *Art* and *Forme*, called the *Termes*
of

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of the Law, as for that we do stil retain many other old words and Phrases of speech which were vsed 400 yeares since, and are now become obsolete and out of vsle among them, but are growne by long and continual vse, so apt, so natural, and so proper for the matter and subiect of these, *Reports* as no other language is significant enough to expresse the same, but onely this *Law French* wherein they are written.

And this is the true and only cause why our *Reports* & other books of the law for the most part are not set forth in *English*, *Latine*, or the moderne *French*, for that the proper and peculiar phrasē of the Common law cannot be so well exprest, nor any case in law be so succinctly, sensibly, & withall so fully reported, as in this speech, which is indeede mixt and compounded of all these 3 languages. Which reason hath not bin wel vnderstood by those, who obiect it as a fault to the Professors of our law, that, forsooth, they write their *Reports* & books of the law in a strange & vnknown tongue which nōtice can vnderstād but themselues, to the end that the people being kept in ignorance of the law, may the more admire their skill & knowledge, and esteeme and value it at a higer price. As *Cicero* in his first book *de Oratore* doth testify, that the like conceit was held of the first Professors of the *Civile law*, *Quia veteres illi qui hanc scientiam praeferunt, obtinenda atque angenda potencia sua causa, per vulgari artem suam noluerunt*. And *Cesar* speaking of the *Drunides*, who were Judges and Interpreters of the Law among the antient *Brittaines*, doth report of them, that though they spent twenty yeares in the studie of those Lawes, *Non existimabant fas esse ea literis mandare*.

But the weakenes of this obiection against the authors of our law books will easily appeare, if we consider how easie the *Law French* is to be learned : insomuch that the meanest wit that euer came to the study of the Law, doth come to vnderstand it almost perfectly within ten dayes without a Reader. So as we do not seale or locke vp the mysteries of our law in Hieroglyphickes, or in a darke Language that cannot be vnderstood: But wee expresse the Casers, Arguments, and Judgements of the Law in a forme of speech, so plaine, so significant, and in a Tongue so soone learned by any man, that can speake *English*, and vnderstand *Latine*, as I dare say, there is no rationall sciencē in the world, hauing so many words and *Termes of art*

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and forme, that is so cleerely delivered in any language. And I may truly say withall, that if the booke of our Law were all translated into *Englyssh*, they would not bee better; nay, they would not be so wel vnderstood by the Students thereof, as in this proper and peculiar *Language* wherein they are now written.

And as this obiection touching the *Speech or language* where-in our *Reports* are penned doth arise out of ignorance of the cause thereof, as it is before declared; so are there other vulgar imputations cast vpon the *Law* and *Lawyers*, which may be as easily cleared, as hauing indeede no other ground but the meere misunderstanding of such as are strangers to the Profession: namely first, That there is much *uncertaintie* in the reasons and Judgements of the Law. 2. That there are extreme and vnnescearie *delays* in the proceedings of the Law. 3. That many *bad & dishonest causes* are wittingly defended by the professors of the law. But, *Sapienia iustificatur à filijs suis.*

1. Therefore first touching the *incertaintie of the law*; Certaine it is, that *Law* is nothing but a rule of reason, and *human reason* is *Lesbia regula*, pliable every way, or like a cup with two eares, as the French prouerb is, which may be taken vp on either side, as well with the left hand as with the right; so that not onely the knowledge of the *law*, but all other *rationall Sciences* that are subiect to *Argument* and *Discourse*, must needs be subiect to *uncertaintie* & to *error*: & therefore vpon Judgments giuen in our Ordinarie Courts of Justice, the law doth admit and allow *writs of Error* to be brought, without any touch or dishonour to the Judges, though their Judgments be reuersed for *error* in point of law.

Howbeit there is no *Art or Science* that standeth vpon discourse of reason, that hath her *Rules* and *Maximes* so certaine and infallible, and so little subiect to diuers interpretation, as the Common law of England, as it is obserued by the Lord chiefe Justice Coke, in his Preface to the second part of his *Reports*, That in all his time there haue not beeene mooued in the courts of Justice in England, two questions touching the right of *discents* or *escheats*, or the like fundamentall points of the common law: So certaine, sure, and without questions are the *principles* and *groundes* thereof.

But whence then do so many debates & controueries arise & where-

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whereupon do we plead and contend so much in the courts of Justice, if there bee so few doubtes and *uncertainties* in Law? doubtlesse this question is soone resolued by one plaine and common distinction. In all the causes that are controwerted there is either *Quæstio Iuris*, or *quæstio facti*. But for one cause wherein a *question of Law* doth arise, that is indeed with the debating, there are a thousand causes at least, wherein the *fact* is only in question, and wherein if the truth of the *fact* were knowne, the *Law* were cleere & without question. So as the pleading & contention in *Westminster Hall* and the rest of the courts of Justice in both realmes, is for the most part touching matters of *fact*: In the *Chancerie*, whither there be trust or no trust, fraud or no fraud: In the *Star-chamber*, whither a Riot or no riot, Forgerie or no forgerie, Periurie or no periurie: & the like matters of *fact* come only in question in all other Courts which proceed to the hearing & determining of causes by the examination of *witnesses*. And in the Courts of *law* where the triall is by *Iurors*, are there not a thousand *issues* ioyned vpon matters of *fact*, for one *demurrer* that is ioyned vpon a point in *law*? and when all these *issues* are tried either at the Barre or at the Assises, how many hundreds of *generall verdicts* are there giuen, which determine matters in *fact*, for one *speciall verdict*? whereupon do result questions in *law*.

And againe, of all the questions in *law* which doe arise vpon *demurrers* or *speciall verdicts*, or which are moued in *arrest of Judgmet*, how many of them are there ouer-ruled vpon the first opening or putting of the *Case*? and how few of them are there that are malleable, or can endure the hammer, so as they come to be solemnly argued at the Barre and at the Bench? As for the *Exchequer Chamber cases*, which are of such difficulty as that they draw an assemblie of al the Judges of the law for the resolution thereof, they are so rare, as scarce twice in a yere are those Judges drawne out of their proper Courts to deliuer their opinions vpon those doubtfull points. So as it is to bee ascribed to the great learning, wisdom, grauitie, and constancie of our Judges, to and the *certaintie*, & excellent *harmony of reason* in our *Law*, that there are no more diuersities of opinion among the Judges, or doubtfull questions in the *Law*, than there are.

For if the *Rules & Manieres* of the *law* were a thousand times

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as many as they be indeed, yet would they carry no proportion with the infinite diversitie of mens Actions, and of other accidentis, which make the Cases that are to be decided by the Law. Besides, it must be a worke of singular judgement, to applice the grounds and Rules of the Law which are fixt and certaine, to all human acts and accidents which are in perpetuall motion and mutation.

And therefore we may truly say for the honor of our law, notwithstanding that vulgar imputation of *incertainty*, that the judgement and reason of it is more *certaine* than of any other human Law in the world: As well because the grounds of our common law haue from the beginning bin laid with such deep wisdome, policie, and prouidence; as that they do prouide for, and meet with, almost all cases that can possibly fall out in our Common-wealth, as also because those grounds are so plaine & so cleere, as that the Professors of our law haue not thought it needfull to make so many *glosses* and *interpretations* therupon, as other lawes are perplexed and confounded withall: which *glosses*, as one doth well obserue, do encrease doubt and ignorance in all *Arts and Sciences*. And therefore the *Civilians* themselues confess, that their law is a *sea full of waves*, the *Text* wherof being digested into so many volumes, and so many Doctors interpreting the *Text*, and twice as many more commenting vpon their interpretations, and so *glosse* vpon *glosse*, and *booke* vpon *booke*, and euery Doctors opinion being a good authoritie fit to be cited and vouched among them, must needs breed distraction of opinions, and *uncertaintie* in that law. The like may be said of the *Cannon Law*, albeit the *Text* thereof bee scarce four hundred yeares old. But of the Professors of our law, who euery yet hath made any *glosse* or *interpretation* vpon our Master *Littleton*? though into that *little booke* of his he hath reduced the principall grounds of the common law, with exceeding great judgment and authority, and with singular method and order? and yet if hee had been an Author in the *Civile* or *Canon law*, I dare say, there had bin, by this time, so many *Comments* and *glosses* made vpon him, as the bookes written vpon this booke only, would haue bin more in number than all the volumes of our law at this day.

But the learned men in our law haue euer thought, that *Littleton* being a learned and reverend judge, wrote with a purpose to

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to be vnderstood, and that therefore another man, especially if he were of lesse learning than hee, could hardly expresse him better than hee hath expressed himselfe. And therefore his book hath euer bin read of our yongest Students, without any Commentarie or interpretation at all.

But for all this, it is obiected that our latter Judgments do many time crosse & contradict the former, directly, in one and the same point of law, which is a manifest argument of *incertaintie* in the Law.

Affuredly, there are verie few precedents of such contrarie Judgments, scarce two in this age. And yet if the reasons of the later Judgments did appeare of Record, we should find them grounded vpon *mischiefes* & *inconueniences* arising since the former Judgments, or vpon other weightie considerations respecting the good of the coymmon wealth in generall. Otherwise there are no Judges in any State or Kingdome vnder the Sun, that do more reverence the opinions and Judgements of their predecessors, than the Judges of England haue euer done, as your Lordship, for their honour hath obserued, in that most worthie speech of the *Postnati*, wherein, among other things, your Lordship doth note the memorable saying of *Askne*, 37: Hen.6. fol. 22. Such a Charter hath been allowed in the time of our predecessors, who were as sage and learned as we be, and of *Markham*, 4. Ed. 4. fol. 41. It is good, saith he, for vs to doe as it hath been vsed in former time, and not to keepe one way one day for one partie, and another day the contrarie for the other partie: the former precedents are enough for vs to follow.

But on the other side, let vs heare what a learned Canonist *Lodonicus Gomez* in *regula de Triennali possessore cap. 5.* is bold to say, *Non est inconueniens (saith he) iudicium esse uno tempore insitum, & postea eius contrarium iustius: & hoc malum videtur impuni mortalibus in pacem, ut earum opiniones secundum varietatem temporum senescant & intermoriantur, aliaque diversa vel priorib[us] contraria renescantur & deinde pubescant. Talis enim est humani iuriis disciplina, ut nulla in ea opinio eodem statu duci stare possit. Dies diu erubet verbum, & nox nocti indicat scientiam.*

And againe, *Opiniones hominum eorum corpora sequuntur, quia cum tempore veterascunt & perirent, & sicut rerum omnium, itaq[ue] quoque & opinionis est quada vicissimdo. And in another place, Stilus*
bedierius

A Brefe ab Oedidatoria.

bodierne, proper modernis temporentia superhium iudiciorum magis
interritatu, & iudeo salto dico quod modernis suis sicut Calices in ca-
piti Elephantis, quia huiusmodi priores & posteriores: quoniam timores ratio
perspicacitatis. And thus much may suffice to be spoken, to re-
move that scandal of *universitas*, which Ignorance doth un-
worthily cast vpon the Commission lawe.

Batis the reason and judgement of our Law be so little
subiect to *uncertainty*, he comitteth it to passe that the pro-
ceedings of our Law are so much subiect to *delay*? for this is
another vulgar obiection against our Law and the professors
thereof. But who are they that make this obiection? haue they
them selues beene engaged in any suits of importance? haue they
passed through the Courts of justice either in course of law, or
in course of equity? if they haue not, they speak but by *heare-say*,
and then their testimonie in this behalfe is of little credit. If
they haue had any long depending suits of their own, then let
them examine whither their owne spleen and wilfulness, or the
corruption of some needie solicitors, (who picke their living
out of the businesse they follow, and are loath to *quench the fire*
that maketh them warme) haue not rather drawn their causes to
an extraordinary length, than the ordinary processe of law, or
the advice of learned Councell. For such as are learned *Con-
tollers* indeed, are like good Pilots, who though their skil be best,
tryd in a long and difficulte voyage, do rather desire faire wea-
ther, and a speddie arriall with their passengers in the hauen.

But the troth is, it is the *stomach* or *malice* of such clients as
will not sticke to say, That they will spend all they are worth
to haue their will of their aduersaries, (and therefore will not
be satisfied with any judgement or decree) that doth produce
and prolong suits in law; who when their learned Councell
indeed do refuse to outwit that *peccant humor* in them, do seek
out discarded *Impostors* or *Idolls*, of whom there is an opinion
among light & ignorant people, of extraordinary cunning and
sleight in carrying of businesse with aduantage, & in curing of
foild & desperat causes. These men give them councell accor-
ding to their owne heare, because they sooth them in their *tri-
geous humor*: howbeit in the end, when they haue wearied and
wasted them selues, they find how weak those wiles and crafty
courses are, & learn of *Eso*, that that one only plain way which
the Catte had to escape from the Dogges, was better and safer
than

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than those hundred trickes of evasion whereof the Foxe did vaunt before he was taken : and they find withal the saying of Cicero true, *Ignoratio iuris litigiosus est potius quam scientia.*

Besides this malignant and vnquiet disposition of many Clients, there is another cause why suits are not brought so soone to an end as perhaps they were in former ages : namely *the multitude of causes* now depending in euerie Court of Justice, euerie of which causes must haue conuenient time allowed, as well to prepare it and make it ripe to be heard or tried, as for the triall and hearing it selfe. And the true cause of the *multitude of causes* doth proceed from this, that the commodities of the earth being more improoued, there is more wealth, & consequently there are more contracts reall and personall, than there were in former ages. Besides, there is more luxurie and excessie in the world, which breedeth vnlthriffts, bankrupts, and bad debtors; more couetousnesse and more malice, which begetteth force and fraud, oppression & extortione, breach of the peace, and breach of trust. Out of these fountaines innumerable suits do spring, which make the courts of justice so to swel; and hence it is that our statute lawes since Hen. 8. his time doe make vp so great a volume ; and hence it is that the professors of the law are growne withall to so great a number, for where there is *magna mens*, there must be of necessarie *operarij multi.*

Indeed, if wee all lived according to the *law of nature*, wee should need few laws, and fewer lawyers. *Do as thou wouldest be done unto thee* were a rule sufficient to rule vs all ; & every mans conscience would supply both the place of an *advocate* & a *judge*, and then we should suffer no costs of suit, nor delay of proces.

And againe, if we were a poore and a naked people, as many Nations in *America* be, we should easilly agree to be iudged by the next man we meet, and so make a short end of euerie controuersie. When the people of *Rome* were little better than *Sheepheards* and *Heardsmen*, all their laws were contained in *ten* or *twelve Iuorie tables* : But when they became Lords of all the world, what a world of bookees were there written of the *Roman Ciuill law*? The like we see in every commonwealth, when it once begins to flourish and to grow rich, & mighty: the people grow proud withall, and their pride makes them contentious and litigious, so as there is need of many Lawes to bridle them, and many Officers to execute those lawes, and many

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Lawyers to interpret those laws, and al little enough: as when a body grows full and grosse it needs more physick than when it was leane.

And yet though our suits and causes be very many, and our Courts of Iustice but a few, whereby it must needs come to passe, that euery particular busines moouing in his turne must haue the slower motion: yet if we compare our legal proceedings with the proces of other kingdomes & commonweales, (especially in *France*) we shall find, that according to the vsual clause in diuers writs, we haue indeed *plena & celerem iustitiam*, (though the *briefest Iustice be not alwaies best*) and that our causes for the most part being orderly pursued, may come to their period in a yeaire, with the course of the *Sun*, when there are many processses in forreine countries, that seeme to be governed by *Saturne*, which planet doth scarce finish his course in the space of thirtie yeaeres: as *Bodin* doth testifie of his own country, that there were more suits in law depending in *France*, than in all *Europe* besides, and that many of those causes were a hundred yeaeres old: as that of the county of *Rai* (saith he) which suit hath been so well entertained in all the *Chambers of Iustice*, as albeit the parties that began it are long since dead, yet the suit it selfe is still alive. Besides, we haue not so many *Appeales*, nor so many *reviewes* of causes, as the *Civile* and *Canon* lawes do admit; neither haue we at this day so many delaies by *essoynes*, *vouchers*, & *protections*, as were in vse in former ages, when titles of land were tried onely in *Actions reall*, which are now growne almost out of vse, and a more speedy course of trial invented by *mixt* and *personall Actions*.

Lastly, there is no Nation in the world (I speake for the honour of our nation and of our land) that hath a course of Iustice so speedy, and withall so commodious & easie for the subiect, as our trialls by *Affise* and *Nisi prius* are. For what Kingdome is there vnder the *Sun*, wherein every halfe yeaire the publicke Iustice doth make her progresse into every part thereof, as it doth in the Kingdomes of *England* and *Ireland*? whereby it commeth to passe, that whereas the people of other countries do trauell far to seek Iustice in their fixt and settled Courts, as it were at fountaines, or cisternes, the streames of Iustice are deliuied vnto our people, & brought by *cōduit pipes* or *quils eue* *hōme*, as it were, to their own doores. And thus much I thought

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fit to obserue for the clearing of that vniust imputation of long
and vnnecessary *delays* in our legall proceedings.

3 But there is yet another exception against the professors
of our law, namely, that wittingly and willingly they take vp-
on them the *defence* of many *bad causes*, knowing the same to bee
vniust when they are first consulted with and retained. And
this is obiected by such as presume to censure our Profession
in this manner. In every cause betweene party and party (say
they) there is a *right*, and there is a *wrong*, yet neither the one
party nor the other did euer want a Councellour to maintaine
his cause. This may be true for the most part, and yet in truth
the learned Councell whose fortune it is to light on the *wrong
side* may bee free from imputation of any blame. For when
doth the right or wrong in every cause appeare? when is that
distinguished and made manifest? can it bee discouered vpon
the first commencement of the suit, and before it bee knowne
what can be alleaged and prooved by either partie? Assuredly
it cannot: and therefore the Councillor when he is first retai-
ned cannot possibly iudge of the cause, whither it be iust or vni-
just, because he heares onely one part of the matter, and that
also hee receiuers by information from his Client, who doth
euer put the case with the best aduantage for himselfe. But
when the parties haue pleaded & ~~argt~~ issue; when they haue
examined witnesses in course of equitie, and be descended to a
triaill in course of law: after publication and hearing in the *one
cause*; and full evidence deliverner in the other; then the lear-
ned Councell of either side may perhappes discerne the right
from the wrong, & not before. But then are the causes come to
their *Catastrophe*, and the Councillors *at* their last part. And
yet vntill then the true state of the cause on both sides could
not possibly be discouered.

If then the causes that are prosecuted, doe for the most
part hang in a doubtful ballance, vntill the hearing or trial ther-
of, (for if a cause be vndoubtedly & apparently naught on the
one side, no man is so vnwise as to follow it to the end, with the
expence of mony and hazard of his credit) how can it be iustly
said, that the Councillor against whose Client a *Decree* or
Verdict doth passe, hath wittingly defended an *vniust cause*, whe-
re he wist not how the ballance would incline, vntill he had made
his vttermost defence? howbeit if any of our Councillors do
either in the *prosecution* of their Clients causes giue sinister and
crafty

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and craftie Councell, or vpon the hearing or triall thereof, make an over bold *defence* of any dishonest action, our Judges are so tender and iealous of the honor of our Profession, as they lay a note of *Infamie* vpon such persons, so as they seldom or neuer are permitted to rise to any higher degree in the Law, or any office of trust in the common wealth.

Whereby it commeth to passe, that no men of any other calling or profession whatsoeuer, are more carefull to preserue their *good name & reputation*, & stand more precisely vpon their *good behauior*, than the learned Professors of the common law.

And as our Judges do discontenance bad Councillors, so doth our law abhorre the defence & maintenance of bad causes, more than any other law in the world besides. For by what other law is *unlawfull maintenance, Champertie, or buying of titles*, so severely punished? By what other law doth the plaintiff *pro falso clamore*, or *vniust vexation*, or the defendant for pleading a *false plea* pay an amerciament or fine to the publicke Justice? And this is one cause, among others, why our law doth not allow Council vato such as are indicted of Treason, murder, rape, or other capitall crimes. So as neuer any Professor of the law of England hath been knowne to defend (for the matter of *fact*) any Traitor, Murdrer, Rauisher, or Theef, being indicted and prosecuted at the suit of the King. *Turpe reos empti m:seros defendere lingua*, saith the Poet, & therefore it is an honor vnto our law, that it doth not suffer the Professors thereof to dishonor themselves (as the Aduocates & Orators in other Countries doe) by defending such offendours. For example whereof we haue extant diuers Orations of Cicero, one *pro C. Rab:rio perduell: omis reo*, another *pro Roscio Amerino*, who was accused of *Parricide*, and another *pro Milone*, who was accused of *Murder*.

But good Lawiers haue not with vs that liberty which good *Physitians* haue : for a good *Physitian* may lawfully vndertake the cure of a foule and desperate disease, but a good Lawyer cannot honestly vndertake the defence of a foule and desperat cause. But if he fortune to be ingaged in a cause, which seeming honest in the beginning, doth in the proceeding appeare to be vniust, he followeth the good councl of the schoolmen Thom. Aquinas 22. Quæst. 71. art. 3. *Aduocatus si in principio credit causam iustum esse, que postea in processu appearat esse iniusta, non debet eam prodere, ut scilicet alteram partem iunet, reuelando causa*

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causa sua secretas : Potest tamen, & debet causam deserere, vel cum cuius causam agit, inducere ad cedendum, sive ad componendum, sine adversarij damno.

And thus I conceiue, that the most common and colourable exceptions which are taken against our law and lawyers, may be answered and cleared by the plaine reasons & demonstrations before expressed : So as our profession may stand and be iustified in all points against *Ignorance, Envy, and ill contented suitors*, who like cholericke *Cheſſe-players*, when they haue had a mate giuen them, could find in their hearts to cast both *Cheſſebord* and *Cheſſemen* into the fire.

These vulgar errors being thus reuersed, so as we may truly say, that there is no such *uncertaintie* in the rules of the law, no such *delay* in the proceedings, no such *preuarication or corruption* in the Professors thereof, as it is by some vniustly pretended : why may we not proceed further, & affirme confidently, that the profession of the law is to be preferred before all other human professions and sciences, as being *most noble* for the matter and subiect thereof, *most necessary*, for the cōmon and conti-
nuall vse thereof, and *most meritorious*, for the good effects it doth produce in the common-wealthe.

For what is the matter and subiect of our Profession but *Iuſtice*, the *Lady and Queene* of all moral vertues ? and what are our Professors of the law but her *Couancellors*, her *secretaries*, her *Interpretors*, her *seruantes*? again, what is the *King himselfe* but the cleere fountain of *Iuſtice*? and what are the professors of the law but *Conduit pipes* deriuing & conveying the streams of his *Iuſtice* vnto all the subiects of his ſeveral kingdoms ? so as if *Iuſtice* be rightly resembled to the *Sun* in the firmament, in that ſhe spreadeth her light and vertue vnto all creatures : how can ſhe but conamunicate part of her goodnessse and glorie vnto that ſcience that is her *handmaid*, and waits vpon her ? And if Kings be *Gods schollers* (as *Homer* writeth) and that the rules of *Iuſtice* be their principall *lesson*; and if God do honor Kings with his owne name, *Dixi quod Dixi effis*, (as a more diuine Poet than *Homer* ſingeth) especially for that they ſit vpon Gods owne ſeate when they minister *Iuſtice* vnto the people, do not kings again highly honor those perſons, whose ſubordinat miniftry & ſeruice they vſe in performing the principal part of their kingly office: vndoubtedly, touching the aduance-
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ment of such persons, *Salomon the King* speaketh, that they shal stand before Kings, and God will set them (saith *David*) with Princes, euen with the Princes of his people.

Neither is this Profession ennobled in regard of the dignitie of her employmēt only, but she is to be honoured so much the more for the necessitie and continuall vse of her seruice in the common-weale. For if we must honour the Physition propter necessitatem, as the wise man prescribeth; much more must we honor (for the same cause) the Professors and Ministers of the law. For neither doth all men at any time, nor any one man at all times, stand in neede of the Physition: for they that are in health (which are the greatest number of men) non erunt medici, saith the great *Physition* of our soules, and our only *Advocate* which is in Heauen. But all men at all times, & in all places do stand in need of *Inſtice* and of *Law*, which is the rule of *Inſtice*, and of the Interpreters and Ministers of the law, which giue life and motion vnto *Inſtice*.

For do not al persons stand in need of *Inſtice*, when without her rule the Prince himselfe knowes not how to rule, nor his people how to obey? When without her ſupport the Nobleman cannot vphold his honour, nor the common ſubie & hold his liberty? When without her ſafegard the rich man cannot bee free from spoile, nor the poore man from oppression? Briefly, when without her no man liuing, be hee vertuous or vicious, can enjoy his life, nor any thing that makes his life delightful? For the couetous man cannot encrease his profit, nor the ſedſual man enjoy his pleasures, but vnder the shadow of her wings.

Againe, is not *Inſtice* needfull at all times, when we can neither trauell ſafely by day, nor ſleepe ſecurely by night without her protection? when iſ ſuch a law were made indeed, as was propounded by a wicked Emperour, *That all lawes ſhould ceafe for fourre and twentie houres*, that ſhort ceſſation would bee ſufficient to giue opportunity to wicked men to make a greater combustion in the whole world, than that which hapned when the Chariot of the Sun did want a guide but halfe a day, as it is liuely exprefſed in the fable of *Phaeton*.

Lastly, is not *Inſtice* neceſſarie in all places, when we cannot without perill make a voyage by ſea vnaſleſſe ſhee waſt vs, nor a journey by land, vnaſleſſe ſhee conuoy vs? when wee ſhould

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be opprest by force in the countrey, if she did not defend vs ;
and vndone by fraud in the citie , if she did not relieu vs ?
when she encloseth euerie mans garden and field , and makes
every mans cottage his castle of defence ? So as we haue not
such a vniuersall and continuall vse neither of the light of the
Sun, nor of fire and water, as we haue of the light and heate
and comfort of Iustice : for a man may remaine aliue some
houres without the vse of those common benefits ; but a com-
monwealth, wherein each priuat mans weale consisteth, cannot
stand and continue one minute of an houre, if Iustice, which is
her soule, be departed from her.

If therefore Iustice, and the law, which is but a rule or lesson of
Iustice, be so necessary for all persons, times, and places, as no fami-
lie, no city, no common-wealth, no Kingdome, can stand with-
out the support thereof ; how needfull is the seruice of learned
men in the law, without which Iustice it selfe cannot possibly
stand : for *Iustitia periret* (saith the President *Cassanau*) si decesset
qui *Iustitiam allegaret*. For if no man did study the reason of the
law, if no man kept in memory the rules of the law, if no man
knew the forme of pleading, or the course of proceeding in
the law, what would become of the publique Iustice in a short
time, or how should the benefit of the law be derived & com-
municated vnto the people ? For as in a naturall body the rea-
sonable soule cannot vse or transmit any of her powers, but by
speciall Organs of the same bodie, disposed & fitted by nature for
euery function, as the eye to see, the eare to heare, to tongue to
speake, and the like of the rest : so in the body politique of a
common-wealth, the law, which is the soule thereof, produc-
eth no effect or operation at all, but by such of her Ministers
as by art and experience are enabled and qualified for her ser-
vice. For *Lex est Iustitia inanimata*, saith the schooleman , *Lex*
est mutus magistratus, saith Cicero : the law of it selfe is dumbe,
& speaks not but by the tongue of a learned & eloquent Law-
yer : she is deafe, and heareth no complaints but by the eare of
a grave and patient Judge : she is blind, and seeth no enormi-
ties but by the eye of a watchfull and diligent officer.

Againe, the law is nothing else but a Rule, which is made to
measure the actions of men. But a Rule is dead and measures
nothing, vnlesse the hand of the Architet doc applie it. It is in-
deed an excellent Instrument to make harmony and concord in the

So of Iustice speak f
R. in the Citie
Reason applied to
service of war

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the Common-wealth : but the best *Lawe* that euer was made could never make musick of it selfe alone, without the learned hand of the *Luseplaier*.

Therefore though *Jupiter*(as *Protagorus* in *Plato* tellet vs) did first inuent & giue the *law*, yet was *Mercury* sent with that heauenly gift, to deliuere it euer vnto mankind. So as it is manifest, that without the maisterie of these *Mercuries*, of these Interpreters of the *law*, namely the learned *Professors* thereof, there can be no vse or application of the *law*, and consequently the *law* or *Injustice* it selfe cannot consist without them.

But as the estimation and price of this *Profession* is exceedingly raised by the necessarie and vniuersall vse thereof, to do her great *meritis* to the common-wealth deserue a farre greater exaltation of honour. For first, the Common-wealth is indebted to the *law* for all her temporall blessings & felicities whatsoeuer : for all our peace, plentie, ciuitie, and morall honestie dependeth vpon the *law*. That we enjoy our liues, our wiues, our children, our lands, our goods, our good names, or whatsoeuer is sweet and deere vnto vs, we are beholding vnto the *law* for it. *Quid sum regna nisi latrocinia sine iustitia?* saith Saint *Augustine*: without Justice the Land would be ful of theees, the sea full of Pirates, the Commons would rise against the Nobilitie, the Nobilitie against the Crowne ; wee should not know what were our own, what another mans, what we should haue from our Auncestors, what wee should leaue to our chil-dren : *Maior hereditas venit vnicuique nostrum a Iure & legibus, quam a parentibus*, saith *Cicero* : in a word, there would bee nothing certaine, nothing sure, no contracts, no commerce, no conuersation among men, but all Kingdomes & States would be brought to confusion, and all human societie would bee dissolved.

But on the other side, the *law* is a fortresse for the weake to retire vnto, a Sanctuarie for the oppressed to flie vnto, it restraineth the boldnesse of the insolent, it tieh with manacles the hands of the potent, and like *Orpheus* Harpe, or *Noahs* Arke, it charmeth the fiercenesse of the Lyon and the Tiger, so as the poore lambe may lie in safetie by them.

If then the *law* it selfe doth merit so highly of all Mankinde in generall, for that it is the Fountaine of all these benefits, what doe the *Professors* of the *law* deserue, which draw these benefits

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benefits out of that fountaine, and derive the same vnto euery particular person? *Nam si non habes quo hanrias, & pustus altius es*, as the woman of Samaria saith of Jacobs well in the Gospel, how canst thou refresh thy selfe with the water of that well? *Si veritas sit in profundo demersa*, as *Democritus* was wont to say, if human actions be so carried in clouds, as it is hard to finde what is *true*, and what is *false*, when the truth of the fact is found, it is as hard many times to distinguish what is *just*, and what *unjust*, if in all causes that come in question, either *questio facti*, or *questio Iuris* must first bee decided, before a man can receive the benefit of the law (for as the wise man saith, *Dens fecit hominem rectum, sed ipse miscuit se infinitu questionibus*) what a meritorious work is it to resolute these troublsom *questions* which arise in the ciuill life of man, either by laying open the truth of the fact, or by clearing the doubt of the point in law, that speedy and equall Justice may be done vnto all, and every one may haue and injoy his own in peace? how often would the truth be concealed and suppressed? how oft would fraud lie hid and vndiscouered? how many times would wrong escape & passe unpunished, but for the wisdome and diligence of the *Professors* of the law? Doth not this Profession every day comfort such as are grieved, councel such as are perplexed, relieve such as are circumuerted, prevent the ruine of the improuident, sau the innocent, support the impotent, take the prey out of the mouth of the oppressor, protect the Orphan, the widow, & the stranger? Is she not *oculus caso, & pes clando*, as *Job* speaketh? Doth she not withal many times stretch forth *brachium secularis* in the defence of the Church & true Religion? All which are workes of mercie and of singular merit. Againe, doth she not register & keep in memory the best *Antiquities* of our Nation? doth she not preserue our antient *Customes* and forme of government, wherein the wisdom of our Ancestors doth shine far aboue the policie of other Kingdoms? are not the Records of her acts & proceedings so pretious, as they are kept in the kings Treasury, like Jewells of the Crowne, & reputed a principall part of the Royal treasure? Lastly, is not a worthy *Professor* of the law a Star in the firmament of the common-wealth? Is he not *lux in tenebris* wheresoeuer he dwelleth? Is not his house as it were an *Oracle*, not only to a towne or city, but to a whole countrie round about him? So

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as he may truly say of the people that seeke his Councell, as
Apollo Pittius spoke in Ennius, of such as resorted vnto his
Temple.

Snarum rerum incerti, quid ego ope mea

Ex incertis Certos, compotesque consilij

Demiso, neres temere trahent turbidas.

Therefore one of the *Roman Emperors* doth not without cause
giue this honorable testimony of the *Professors of the law*, *Adub-
catis*, qui dirimunt ambigua facta causarum, suaq; defensionis viribus;
tam publicis in rebus quam in priuatis, lupa erigunt, fatigate reficiunt,
non minus humane generi prouident, quam si praelijs atque vulneribus
patriam parentesque saluarent: neque enim solos nostro Imperio mili-
tare credimus, qui gladijs, elypsis, & Thoracibus nituntur, sed etiam
aduocatos. Militant namque canisarum Patroni, qui laboratum spem,
vitam, & posteros defendunt. For if it be a worthy deed (as doubt-
lesse it is) for a man to defend his friends or countrey with his
right hand and his sword only: what an excellent seruice is it
to defend them with his speech, his reason, & wisdome, wherin the
excellencie of man doth principally consist.

Therefore both the schooleman and the politike doe pre-
fer *Justice* before *Fortitude*, and the statute of 31. Hen. 8. c. 10.
which ranketh the great officers of the kingdome in their due
places, doth place the Constable & Marshal beneath the Châ-
cellor in all assemblies of councell: for ille semel (saith Cicero,
speaking of the martiall man) *hic semper proderet reipublica*, mea-
ning the learned man of the long Robe.

And in very truth, as the Commonwealth is much behol-
ding to the *Profession of the Law*, so are the *Professors of the law*
not a little beholding to the commonwealth. For if they pro-
cure and preserue her peace and her plentie, doth not shee re-
quite them againe with riches and with honor? Doth she not
aduance them to her chiefe *Benches & Offices*, & trust them with
the *livelhood & lives* of all her people? neither do our learned
men of the law grow to good estates in the common-wealthe,
by any *illiberal* meane, (as enie sometime suggeteth) but in a
most *ingenious & worthy* manner. For the fees or rewards which
they receave, are not of the nature of *wages*, or *pay*, or that
which wee cal *salerie*, or *hire*, which are indeed duties certain,
and

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and grow due by contract for labour or service, but that which is given to a learned Councellor is called *honorarium*, and not *merces*, being indeed a gift which giueth honour as well to the Taker as to the *Giver*: neither is it certaine or contracted for, no price or rate can be set vpon Council, which is vnualuable and inestimable, so as it is more or lesse, according to circumstances, namely the *ability of the Client*, the *worthiness of the Councillor*, the *weightines of the cause*, & the *custome of the Countrie*. Briefly, it is a gift of such a nature, and given and taken vpon such termes, as albeit the able Client may not neglect to give it without note of ingratitude; (for it is but a *gratuitie or token of thankfulness*) yet the worthy Councillor may not demand it without doing wrong to his reputation, according to that moral rule, *Multa honeste accipi possunt, qua tamen honeste peti non possunt.* *your son best as he will be worth vire for his fees.*

This page seemeth to
concern him of reward

Lastly, it is an infallible argument, that the estates of such as rise by the law are builded vpon the foundation of *virtue*, in that Gods blessing is so manifestly vpon them, not only in rasing, but in preseruing their houses and posterities: whereof there are examples not a few, and those not obscure, in euerie shire of England, and of the *English Pale* in this kingdome of Ireland.

If then our common law of England be cleere from those vulgar *imputations*, which *ignorance* doth conceiue, and *envie* report therof, if the profession or science of the law be more *noble*, more *necessarie*, more *meritorious*, than any other temporall Art or science: & if the dignitie of the *Profession* do accordingly dignifie all the *Professors* thereof which are qualified with learning and vertue fit for so worthy a Calling, (for such as are ignorant or dishonest, as they are to receiue no grace by the Profession, so the Profession is to suffer no disgrace by them) how highly is that person honored, whose true merit hath aduanced him to the most transcendent place of honour that can possibly be attained by that Profession! This is that *great place or office* which your Lordship most worthily holdeth (& long may you hold the same) vnder his Maiestie; which though it be the highest pinnacle of honour that any secular person of the long *Robe* can in re or spe aspire to, vnder any Monarch, yet was it given vnto your LL. *nec expetenti, nec expectanti*, by the wifest and most renowned Queen that euer taigned in Europe: who

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Leaving her Crown, together with the faithfull seruants thereof, vnto the wisedest and iustest King vpon earth, his Maiestie in his infallible iudgement and wiſdom, confirmed this honorable office vnto your Lordship, not only with a fulnesse of grace to your ſelfe, but with an augmentation of honor to your posterite. For what increase of honor can the Lord Chancellor receive in his owne person, being that in England which Iſeph was in Egypt, the ſecond perſon of the Realme in the administration of all Ciuile affaires? being made (as it were) chiefē Steward of his maſters house, the chiefē diſpener of his bountie and juſtice, by the delivery & custodie of the great ſcale, which may properly be called the Key of the kingdome: being the ſole judge of that high Court which is Sedes miſerereſtie, and therfore exalted aboue al ſeats of Iuſtice: where he hath Potestatem abſolutam, as well as regulatam, in binding and looſing the proceſſions of the law, and in deciding of cauſes by the rules of his owne coniſcience.

Briefly, what can there be more done to the man whom the king will honor? Is he not ad latum Principis, to attend him? Is he not Auricularius Principis, to aduife him? Doth not the king make him a Conduit of his wiſdom, when he vſeth his voice & tongue to declare his Royall pleasure? And doth he not make him an Organ of his goodneſſe, when he truſteth him with his mercie and coniſcience, in ſweetning the bitter waters of Summum ius, & in mitigating the rigour of the law vnto his people? In a word, doth he not repreſent reverentiam Principis, in the power & authoritie of his office? and do not the people feare & honor the King even in the grauitie & dignitie of his perſon? And are not all these honors made more honorable, and exceedingly raised in true estimation and value, when the ſame are enjoyed in a moſt famous and flouriſhing common-wealthe, & doe proceed as Sun beames from the moſt religious, learned, wiſe, the moſt renowned & excellent King of the world? If then the greatest honors do of right belong to the greatest vertues, (for what is honor but a refleſhion and reward of vertue?) how vertuous a perſon muſt be be, with what gifts and graces, with what abilities and ornaments, both of art and nature muſt he be endow'd, who can worthily ſupplie that great and honourable Office?

Afſuredly, beſides the naturall faculties and powers of hiſ mind,

A Preface Dedicatory.

mind, which he ought to have in great perfection, and besides the outward comeliness and dignitie of his person, for *Gratior est pulchro veniens à corpore virtus, & Sapientia homini laces in utili-
tate eius*, saith Solomon, he must be furnished with al learning that hath any relation to the publique good; Diuinitie, Law, Politie, Moralitie, and especial Eloquence, to impart & communicate all the rest. He must withall haue a long and vniuersal ex-
perience in all the affaires of the Commonwealth: hee must
be accomplished and absolute in all points of Gravite, Con-
stancie, Wisedome, Temperance, Courage, Justice, Pietie, In-
tegrite, and all other vertutes fit for Magistracie and goueme-
ment; yet so as the same be seasoned and tempered with affi-
bilitie, gentlenesse, humanitie, courtesie, howbeit without des-
cending or diminishing himselfe, but still retaining his digni-
tie, state, and honor. Briefly, he must be a person of such ver-
tue and worthinesse, as his life may be a *Censure*, and his ex-
ample a *Mirror* for all other Magistrates. These are the excellen-
cies and perfections wherwith that great Officer must bee
qualified and adorned: And this *Idea* haue I conceived of him
not out of mine owne imagination, or weake discourse of rea-
son, but out of an humble obseruation of your Lordshippe, in
whom not only those abilities & vertues before expressed, but
many other graces and ornaments do shone so brightly, as the
weakest judgement may collect out of the same a most excel-
lent patterne of a most excellent Chanceller.

But perhaps it would bee thought more comely for mee to
pronounce this of your lordship to others collaterally, than to
speake it to your Lordship of your self directly, (though what
can I declare in this kind to others, but that which the world
hath long since knowne & acknowledged?) yet is there no man
living whom it may better become than my self, to praise and
honor your LL. every way, whose fauor hath bin (as it were)
a good Angel unto me, & to whom I stand bound for so many be-
nefites, as that which might carry a shew of *adulation* in another,
must needs be thought but *duety* and *gratitude* in me.

Howbeit, besides my particular obligation, there is no Pro-
fessor of the law that is not obliged to do your lordship al-
tho' not, for the honor you haue done to the Profession of the law,
whereof your Lordship hath been, during al your time, a prin-
cipall light and ornament.

And

A Preface Dedicatore.

And now (my most honorable good Lord) my devotion to the Profession of the law; & to your Lordship the most noble Patron of the professors thereof, hauing enlarged this discourse beyond the measure & limits of an Epistle (& therfore I give it the name of a Preface) it remaineth that I present unto your Lordship the rude collection of a few selected Cases, which since the beginning of his Maiesties Raigne haue beene argued, resolved, & adiudged, in this Realme of Ireland.

These are the first fruite of my labor in this kinde of learning, & are therefore a due & proper oblation to your Lordship, for that my studie haue yeelded the better fruit, being cherished by the Sun-beames of your Lordships favor. This is also the first Report of Cases arising in Ireland & ruled in the Courts of Iustice there; that euer was made & published to the world, since the lawes of England were first established in this kingdome. Lastly, I haue made choise of such speciall cases, as are either proper for this kingdome onely, or else doe containe for the most part points of learning not common, or at least not largely debated, in our booke of the law.

But for as much as *Natura incipit ab imperfectis* as the schoolman saith. Therefore these weake & imperfect beginnings do leske your Lordships protection, til time shal give them more strength & reputation. In the meane time, if your Lordships judgement shall allowe the publication hereof, I shall haue the lesse cause to doubt the censure of any other, specially of my Maisters of the law in England, if any of these bookes happen to come to their hands: to whome I may truly make this protestation, that these cases being resolved & adiudged in the Courts of Iustice in Ireland, are not collected & published by me, to increase the number of the bookes of law in England, or to interrup the better studies of the students there, by reading of this collection, but principally for the vse and benefit of our practisers here in Ireland, and to moue and incite others in this Kingdome, by this example, which doth onely open and shew them the way, to perforne the like seruice hereafter to posterity.

Neither haue I besought your Lordships patronage for these cales of Ireland, in respect of my selfe onely, but also in regard of that relation which your Lordship hath vnto this kingdome. For albeit your Lordship be *Lord Chanceller of England*, yet

A Preface Dedicatórie.

yet the great Seale which you keepe there, is also offorce and power within this Realme. Neither can we forget without ingratitude, that your Lordship in that high place of Councell which you hold in England, is vpon al occasions watchful and carefull of the publique good & welfare of Ireland.

Now therfore the *only wise* God who hath giuen vnto your Lordship those blessings which *Wisdom* hath in store for them that loue her, *Longitudo discernit in dextra eius, & in sinistra eius diuinitas & gloria,* preferue your Lordship for many yeares in health and honor, that you may long continue a prudent and principall Councillor vnto your Soueraigne, a louing & prouident Father vnto your Countrey, a comfort and countenance to your particular friends, and all others who partake of your honorable fauours: among which
I remaine

*Most bound, and most denoted to doe your
Lordship all humble seruice,*

I o. D A V I S.

A Pacific Ecclesiastic.

central hill of the high & weighty mountain of Iberia.

Philosophical Connection and A New Approach to the Study of the Mind

CONCLUDING WORDS OF A POINT-TO-POINT TELEGRAPH MESSAGE

~~Section may be deleted or revised~~

LOW COSTS : STIMULUS TO INNOVATION

1100

*magis et hoc non sicut in Iudeo-Romanis
seu per se illa quidam.*

• 21 V k C . O



Trin^e 2. Iacobi, in Leschequer.

Le case de Proxies.

Enter le Roy & Sir Ambroſe Ferib, Doctor del Cimile Ley, et un des Maistres del Chauncerie, le case fuyt tyel.

Levesque de Meth, devant le dissolutiōn des Monasteries, auoit un Proxie de xv. s. iiiij. d. payable annualment hors d^e commandrie de Kells in le Countie de Meth, parcel del possesions del Hospitall de S. John de Ierusalem in Ireland, et un aut Proxie d xx. s. payable annualment hors del impropriate Rectory d Treuet in mesme le Countie, parcell del possesions del Abby de Thomascourt in le countie de Dublin.

Anno 33.H.8. le dit Hospital de S. John de Ierusalem, et l^e dit Abby de Thomascourt fueront suppreſſe & dissolute, & tous les possesions des ambideux dits measons fuet vest in le actual et real possession del Corone per act del Parliaſt. Mes in m^e le act est un expreſſe Sauing de Proxies al toutz Evesques et leur successořs.

Apres ceo, l^e Evesque de Meth a son Clergie, (car c^e Evesquerie nad Deane & Chapter) p^r fait inroll dat 16. Martij, 36. H.8. graunt les Proxies auantdit, (enter autres) al Roy H.8. ses hys et successořs; le dit Roy esteant al temps del grant et puis, in actual possession del dit commandry et Rectory, hors de quz les ditz Proxies fueront payable.

Puis, la Roigne Eliz. per ses Lettres Patents dat 1. Novembre en l^e an 33. de la taigne demise le dit commandry et Rectory al Doctor Forth, rendant rent, sans aucun reservation des Proxies. Et si ore il sera charge que les ditz Proxies,

Le Case de Proxies.

¶ les arrenges dyceux encorues depuis le commencement de son leas fuit le question. Et fuit adiudge que il serroit chargé. Et 3. points fuerot moue, & debate en l' argumēt de cest Case.
1. Si les Proxies fueront tout ousterment extinct per le suppression & dissolution des dits religious measons de S. John de Ierusalē, et de Thomascourt, n̄t obstant le dit Sauing, deins l' act de Dissolution.

2. Si l' Evesque putoit granter les Proxies al Roy.

3. Si les Proxies fueront extinct en maines del Roy per le Unitie de possession.

¶ Ur le Premier point, fuit object per le counsel del Sir Ambrose Forth, que les Proxies fueront extinct per le suppression et dissolution de les religious measons: pur ceo que le Visitation de les religious measons fuit la sole cause de paynt des Proxies. Et celiante causa cessat effectus. Car les religious persons esbaupt deraigne, & disperse, ne fueront, apres ceo, subiect al Visitatioe, et donys, quant la Visitation cease, le Proxy, esbaupt solement un Exhibition done al visitor pur les trauylling charges, cessera aussi. Car Procuratio (come les Canonists deffine ceo) est exhibitio sumptuum necessiariorum facta prælatis, qui dioeceses peragrando Ecclesiæ subiectas visitant.

Uncore ils agreeont, que le Visitation ne cessa immideatement per le surrender, ou per l' act de Parliamt, que done les religious measons & lour possessiōs al Corzone; car p ceo, lour Corporations ne fueront dissolute, come est tenuis en le case d' Deane & Chapiter de Norwich en le 3. part des Reportz de le Seignior Coke. 15. Ass. p. 8. 32. H. 8. Br. Corporations 78. mes quant les religious persons fueront deraigne, & auoient relinquis lour habit, rule & order, pur queur il s'fueront visitable, adonques le Corporation fuit ousterment dissolute, et sur ceo le Visitation cessa.

Et ils ressemblent le proxie due pur Visitation al Annuitie pro Confilio, ou pro Seruicio impēdendo; si le counsell, ou le service soit withdraw, le Annuitie est determin: issint si Bent charge soit graunt pur un chimir, stopp le chimir, et le Bent charge sera aussi stopp, 9. Ed. 4. 19. 15. Edw. 4. 2. 21. Ed. 3. 7. 45. Ed. 3. 8. Dier 6. H. 8. 2. & 6. Ed. 6. 76. issint ou Corodie est graunt pur certaine service destre fait; omission del service, determin le Corodie, 20. Edw. 4. fol. vltimo.

fuit

Le Cas de Proxies.

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Fuit aux y dit, que cest dutie ne fuit annual, mescontingēt,
et paialble tantsolement sur chescun visitation, come escuage sur
chescun iourney roiall, ou come Aide pur file marier, ou pur
faire fits chivaler; en queux d'arraine casex, si auoworé soit
fait pur le ayde est bone plea en barre de auoworé, a dire, que le
auowant nad tel fits ou file en vie, al temps del Ayde le vte
F. N. Br. 82.g.

Et pur le Sauing, ilz diont, que ceo fuit vn Flattering Sauing,
que ne poet preseruer les proxies en esse, queux la Ley ad ex-
tinguish, come est ten⁹ 14. Eliz. Dier 3 13. que les tenures del
Obit ou Chauntry terres tenus del subiects, sont extinct per
lact del 1. E. 6. nient obstant le Sauing, en le dit act, propter ab-
surditatem ; issint les proxies icy serront extinct propter absur-
ditatē. Car come est absurd que le Roy sera subiect al atten-
dance en respect de tenure , issint est absurd, le roy sera sub-
iect al visitation ou al ascun dutie en respect de ceo. De mesme
le nature sont plusors Sauings mise en Walsingham's case, Plo.
Com 563. queux sont la appell Flattering Sauings.

PUr le second point, fuit obiect, que le evesque ne püssoit graunter les proxies al Roy, pur 2. reasons: lun deduce del person del Roy, le autre del person del evesque. 1. pur le Roy, admit que il fuit capable de tel spirituall office, come destre visitor des religious persons, vnozre il nauera Proxies p le inconueniecie, indecency, & auty p le impossibilitie. Car nest conuenient, ou decent, que les poures religious persons porteron les charges de Roy, & est auxi impossible. Car per le Canon Ley, Procuratio exhibenda est secundum qualitatē personae visitantis; & le Maiestie del person del roy, & le grandeur d son trayne est tel, que per presumption del ley, nul priuate person poet porter les necessary charges, ou frere a lui enterainement agreeable al quality de son person. Et pur ceo est tenus 27 Hen. 8. 1 o.b. que ou common sans number fuit grant al Abbe & ses successoires hors del Mannor de Dale, que aprez le dissolution, le roy nauera le common sans number: car la est dit, que si le Roy aueroit, il püssoit surcharge la terre, que la ley ne voet suffer. Come si un vilaine purchase common sans number, le seignior nauera ceo, pur le reason auantdit, car donques le terrenenant perdroit la profit de sa terre.

2 Pur le evesque, comment que il poet graunter les Temp-

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Le case de Proxies.

rall Possessions oue le assent de son Chapter ou Clergie : bnc
ceux duties queux il ad per prerogative de son Episcopall
Chaire, ou come incident a son spirituall function, il ne poet
graunter : queux per la rule del Canon ley sont de 3. kinds.
1. Subsidium Cathedratium, que est duty de prerogative & su-
periority. 2. quarta Episcopalis, que est done a lui pur repara-
tion de les Esglises. 3. Procurations, pur son Visitatio ut su-
pra, que est perquesite ou profit de son spirituall iurisdiction.
Come creation money done al Duke, ou Earle, pur mainte-
nance de son honoz, ne poet estre graunt ouster 6. Henr.8.
Dier 2.2.

PUr le 3. point, ils diont, que coment que Proxie soit un p-
sonal chose, payable tant solement en respect des persons
Visitable : bncore admit que ceux Proxies sont deuenus
real, & que le commaundry & rectory sont charges oue ceur
Proxies, donq's le bntie de possession extinguish euz en mains
del Roy : come seigniory, rent charge, common, & similia sont
extinguish per le purchase del terretenant, sil ad equall estate
en le terre, & en la chose que charge la terre. Et a cest entent
le case de 2. H.4. 19.2. fuit mise, ou un Prioz ad annuitie horz
del personage per Prescription, le personage est appropriate
al Priozy, le annuitie est extinguish a tousz iours.

MEs de auer part, fuit respond per le counsell del Roy, &
Resolute per le Court, que les ditz Proxies ne fueront ex-
tinguish per le dissolution des ditz religious measons,
mes fueront bien preserue & sauves al euesque : Et que leuesqz
ad eux bien grant al Roy : & que le bntie de possession en
matres del Roy fesot forisque un suspension, & nemy extin-
guishement des ditz Proxies.

Quant al prier point, prierment fuit obserue, que
les Proxies nauoient lour Originall en le Primitive
Church. Car Saint Paul en visitant tous les esglises
quens il ad plaint en Asia et Europe, ne demaundoit aucun
Proxies, mes laboroit oue ses proper maines, pur son suste-
nance, ne ferroit burthenisme al Esglises. Bncore long
temps apres, le Canon ley, que declare que Proxies sont due
al Euesques en lour Visitations, dit, que ceo est agreeable
al

Le Case de Proxies.

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Al doctrine de S. Paule, vt à quibus spiritualia recipimus, eisdem Temporalia comunicemus. Iustit' Iuris Canos libr 2.c. de Cēfib.

Secondment fuit note, que ceo que nous appellons proxie ou procuracy, est appell per leg Canonists, procuratio, pur ceo que sur chescun visitation leg persons bissitable procuront necessarie provisions pur les visitors: queut provisions al p̄imes fueront fait en refections ou bictuals, viz. in esculentis et po- culentis, mes ceo fuit oue measture & tēperance, ne ieiuniorum doctrinā rubētib^z buccis prēdicēt, come est dit en bn vñ canōs.

Mes apres, quant le pompe et excesse des visitors requiroit tant des provisions que fueront greeuous et intollerable al esglises, et religious measons: adonques chescun esglise & meason fuit reasonablement taxe, et per ceo, chescun proxie fuit reduce al certeyn summe de money, payable annualmēt, en nature de pension, al Ordinaty, que ad le power de visita- tion de micro lirc, come est dit. 10. Eliz. Dier 273.b.

Et ceo fuit aptement ressemble al Socage en nōstre Ley, de que Littleron dit, que en auncient temps, devant le limitatiōn de Temps de memozie, grand part de les Tenaunts queut tiendront de lour Heignours per Socage, devoient bener oue lour Soke per certaine iouers per an, per ater et semer les demesnes del Heignour; et pur ceo que tiels ouerages fueront fait pur le bluer et sustenance de lour Heignours, ils fiteront quites enuers lour Heignours de toutz autres seruices; et puis apres tiels seruices fueront changezen Deniers, per consent des Heignours, & per desire des tenants, en bn annuel rent, &c. Et scomme les tenaunts en Socage apres le dit changez, payeront lour rents annualment al Heignour, comment que il ad alien les demesnes, et ad mal terre destre Are ou seine: tissne les Eglise et Religious measons, apres que le prēcution de bictuals fuit reduce al summe certaine, paperont ceo al Ordinacie annualment, comment qu'il ne fesoit ascun Vification. Et tissne le Rule de Cessar causa cessat effectus, ne tient en ceux Caless. Et a celi entent directment est le case de Sir William Capel, mis en Littlers Case, en le 4. part des Reports de le Heignor Coke, ou fuit résolue: que ou homme tient certeyne terre per Rent pur Castle Garde, comment que le Castle soit direrte ou decay, bicoje le rent remayne. Car la est dit, que quauant

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Le case de Proxies.

rall Possessions oue le assent de son Chapter ou Clergie: vñc
ceux duties queux il ad per prerogative de son Episcopall
Chair, ou come incident a son spirituall function , il ne poet
graunter : queux per la rule del Canon ley sont de 3. Kinds.
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tion de les Esglises. 3. Procurationes, pur son Visitatio ut su-
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Dier 2.a.

PUr le 3. point, sils diont, que coment que Proxie soit un p-
sonal chose, payable tant solement en respect des persons
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ad eux bien grant al Roy : & que le vnitie de possession en
maines del Roy fesoit forisque un suspension, & nemy extin-
guishement des dits Proxies.

Quant al Prier point, primitivement fuit obserue, que
les Proxies nauoient leur Originall en le Primitiv
Church. Car Saint Paule en visitant tous les esglises
queux il ad plaint en Asia et Europe , ne demandoit aucun
Proxies, mes laboroit oue ses proper maines , pur son sus-
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Le Case de Proxies.

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Secondment fuit note, que ceo que nous appellons proxie ou procuracy, est appell per les Canonists, procuratio, pur ceo que sur chescun visitation les persons visitable procuront necessaray prouisions pur les visitors: queux puissions al prime s fueront fait en refectioms ou bictuals, viz. in esculentis et poculentis, mes ceo fuit oue measure & tēperance, ne ieiuniorum doctrinā rubētib' buccis pradicēt, come est dit en hys bgs canōs.

Mes apres, quant le pompe et excesse des visitors requiroit tant des prouisions que fueront greeuous et intollerables al esglises, et religiōus measong: adonques chescun esglise & mealon fuit reasonablement taxe, et per ceo, chescun proxie fuit reduce al certeyn summe de money, payable annualmēt, en nature de pension, al Ordinary, que ad le power de visita-
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le Tenant tegnoit del Seignour, de garder , ou repaire le Castle del Seignior, et puis tel service (come Littleton dit en Case de Socage) fuit en antient temps , per mutual consent del Seignour & tenuant, change en un annuel rent, comment que soit dit rent Pro Warda Castri, hncore le Seignior ne poet auer le Castle Gard arrere, quant il voet , mes, apres le composition et change fait, le Castle Gard est tout ousterment ale; et Pro no import condition, come en le case de annuitie grant Pro consilio impendendo, mes pleine et perpetuel recompense et satisfaction. Pur mesme le reason en nostre case, comment que les personages impropriate sont fait ore lay fee, et Deuenus en maines des Lays gentz, queux ne sont visitable; et comment que les religious measons sont supprese, dissolute , et dicute, come le Castle en Sir William Capels Case, hncore les ditz certaine summes de money queux veignont en lieuo de Proxies, & retainont le nosme de Proxies, & per antient composition sont fait parcel del certaine & setled reuenues del Euse que, remaineront a tous iours, et ne serront subiect al extinguishment; nient plus que annuities, pensions, ou portions de Tithes , queux sont pay a cest tour hors del plusors Abbeves, & impropriate Rectoriez, & le original causes, p queur ils fueront graunt ou pay , ne serront ore examine, ou brought en question . Et a cest iour le Roy mesme pay & allow Proxies hors de tous impropriations que il ad en son possession; & pur ceo en quelcun lease fait per le Roy del impropriate rectory, il y ad un couenant del part del lessor, que il portera & payera tous Proxies, Synodalls, pensions, &c. Et Sir Humfrey Winch adonques chiefe Baron disoit , que deuant le dissolution des Monasteries, ou rectorie fuit appropriate al Abbey, immediatement le Visitation cessoit quant al Rectorie, car le Abbe ne fuit visitable come Rectour, pur son doctrine , mes come Abbe , pur son rule & order : & hncore sans question le Ordinary ad ses Proxies hors de tous personages appropiate al Abbeves, cibien deuant le dissolution, que apres.

Et pur le Saving en le act de 33. H.8.cap.5. ceo nest idle, ou flatting Saving, mes real & effectuall , car est agree deuant, que ceux Proxies fueront en esse al temps del fesans del Act, & nient extinguish per le Surrender des religious measons

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measons, car lour Corporations ne fueront dissolute, tant que les religious persons ouint relinquish lour measons, & ouint estre disperse : Et doncques tiels choses, queux fueront en esse al temps del fesans del act, poent estre bien preserue, saue per le act, comment que choses extinct deuaunt, ne poent estre reuive per un Saving, fauns expresse parolz de Grant & Restitution. Et cest difference appiert pleinement en le case de Kekewich. 27. Hen. 8. Brooke Parliaments 77. Et en Sir John Molins Case en le 6. part. Des Reports de le Seignior Coke.

² **Q**uaunt al second point, fuit resolute, que les Proxies en lour Original nature esteaunt dutiē payable pur Visitation, fueront grauntable al Roy, & le Roy fuit capable de tel graunt, specialment, quaunt les dits dutiēs fueront conuert al sum de money certaine, en nature de pension ou Annuitie. Car per le auntient Ley del Realme, le Roy ad power de visiter, reformer, & correcter tous abusēs & enormitēs en le Esglise: & per le statutes fait en temps Hen. 8. le Coronē fuit forisque remitte & restore a son auntient iurisdiction, que fuit usurpe per le Evesque de Rome. 33. E. 3. fitz. Ayd del Roy 10. Reges sacro oleo vnci spiritualis iurisdictionis sunt capaces. Et Proxie est profit del Jurisdiction. 10 H. 7. 18. Rex est mixta persona cum Sacerdotio. Auty le Roy auet Tithes per le common ley, de queux nul lay person fuit capable. 22. Assis. pla. 75. 21. Hen. 7. 1. Le Roy mesme visitera les frank Chappells, & Hospitals, 8. Ass. p. 29. N. Br. 42. 2. Et Castaneus in Catalogo Gloria mundi part 5. consideratione 24. Cite un text del Canon Ley, Viz. quod omnes reges dicuntur Clerici. Et un autre text, que dit, Quod causa spiritualis committi potest Principi laico.

Et ou fuit dit, que en respect del grandeur del Roy, & son trayne, competent Proxies ne poent estre exhibit a luy, & per consequence ne poent estre grant a luy; cest objection est toll, en ceo que les proxies al temps de cest grant fueront reduce al ceterne reasonable summes de money: Auty le rule del Canon Ley nest pleinement cite devant, car le rule est, Procuratio exhibenda est secundum qualitatem personae visitantis, & substantiam visitatorum.

Fuit auty resolute, que le evesque, oue lassent de so Clergy, puit-

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puissoit bien grantir les proxies al Roy, pur ceo quela Ley ad qualifie le person del Roy de recevoir tiel grant, comment que ceo soit tiel prerogative del Evesque que ne poent estre assigne al autre person: come le creation money del Duke ou Countee, poent estre graunt et surrendre al Roy, comment que ne poent estre graunt al Subject. Auty les proxies esbaunt ore reduce al certaine summe de Argent, et issint fait part del certayne, setied, & perpetuall reuenuue del Evesque, poent esto cyden graunt per luy, come portion de Tithes, ou Annuitie, ou aucun de ses Rents, seruices, ou autres hereditaments temporall.

Quant al Tiers point, fuit auxy resolue et adiudge, que le bntie de possession des proxies souz les rectouries impropriate et religious measons, hozz de queux les proxies sont payable, ne Extinguish les Proxies en maties del Roy, mesz Suspend le Payment de eux Tantum pro tempore, quoisque le Roy per son grant ad seuer lus des autre.

Pur trouer la Ley en cest point, le nature de ceux choses fuit consider, queux en aucun manier poent estre subject al Drowning, ou Extinguishment, & Unitie de possession. Et ceux sone de 3, hindg, 1. Estates en terre, 2. Actions realles & titres al terre, 3. choses issuant ou provenant hozz del terre, ou pres hozz ou sur terre,

1. Estates en terre, sont proprement merge ou confound, quant meindre estate concurre souz greindre estate, en mesme le person, et en mesme le droit: come, Terminus & feodum non possunt constare simul in una eademque persona. Et le prenante reason de ceo est mise en le case de Bracebridge Plowd. Com 319.b. Pur ceo que Terme est temps finite, & fee simple est temps infinite, et le finit de necessite content estre merge et confound en le infinie. Mes ceo est Confounding et non Extinguishment: car si particular tenaunt graunt ou surrendre son estate al eschey en reversion, le particular Estate n'est extinte, comment que soyte merge et confound: car si particular tenaunt ad charge le Terre souz tene, ou autre encumberance, le Estate remainera en elle a cest entent, Et ceugre Estates en terre, et Droit al terre, sont choses de sot substance, queux ne poent estre extinte, ou interire penitus,

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interire penitus. Et pur ceo Littleton dit que si dislease, quant son entry est toll, relesa al terretenant tout son droit que ceo ne enurera per boy de Extinguishment; car le droit que il auoit passa al tenant per son Release: Et serroit inconuenient, que tel antient droit serroit extinct tout ousterment, Car droit ne poet pas morier.

Mes choses queux issouint hors del terre, come Seigniorz, rent charge, &c. sont subiect al Extinguishment a tous entents. Come si seigniorz graunt son seigniorie al Terrenant a estrange, la serra nul ioyntenancie, ou serviuoz entre eux, car le moitie del Seigniorz est extinct a tous entents & purposes Plowd. Com 419.a. Et si Seigniorz Release al tenuant tout son droit en le Seigniorz, ou en la terre, tel release va per boy Dextinguishment vers tous persons. Littleton 112.b.

2 Real Actions auxy, & Conditions, sot subiect al Extinguishment, & ceo est quasi per vnitie de possession. Come en tout casse de Remitter, la cestuy que ad droit de Action pur terre, ad le possession de mesme le terre, issint que nest aucun person hors que il poet portez son Actio, & pur ceo le Action est Extinguished a tous iours.

Et sur mesme le reason, condition que done title de Reenter en terre est Extinguish per purchase del terre, ou part de ceo. 8. H. 7. 8.b. 33.H. 8. Br. Extinguishment, 49. issint Garraty est Extinguish per reenfeossement, ou discent del terre al mesme le person que ad le Garrantie, 40. E. 3. 13.

3 Choses issuant ou prouement hors del terre, ou prise a eu sur terre, sont de 3. Kindes: & sur ceux different Kindes de choses, sur dont ceux differences.

1 Si les choses ont lour Originall & commencement hors del terre, & nemy alioz, & sont due en respect del terre tantum, & sont part des profits de terre, tel choses serront tous fuit Extinguish per vnitie de possession, si home ad equal estate, & un droit, en ambideux ensemble de cest nature est Seigniorie & reali seruices, 3. Henr. 6. 1.a. 40. Edw. 3. 40. b. Littl. 49.a. 122.b. 34. Assis. placit' 15. Rent charge. Littleton 48.b. Dier 140.b. Common, 11. Henr. 4. 5.a. 24. Edw. 3. 25.b. Chamin. 21. Edward. 3.a. 11. Henr. 4. 5.a. Et 2. reasons de cest rule fueront mise: un, pur ceo que le chose que est extract hors de terre, quant ceo vient al terre arree, sera naturellement

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ment extinct, car est, Reuolutio, ad materiam primam dont vi-
ent le natural Extinguishment, cibien del home, que de tous
auters Terrestriall choses. Le auſt plus legal reason est, que
cestuy que ad tous les profitz entierment ne sera dit dauer
part des profitz, car part est confound en le tout, & pur ceo hōe
ne poet auer leignoz, rent, common, ou chimin en son terre
demesne.

2 Mes del auter part, choses que ne sont iſſuant hors del
terre, come parcel des profitz del terre, mes sont derivee alt-
ors, & due pur auter respect, comment que sont prise & eu deins
certaine terre, vnoſore, vnitie de possession ne Extinguish tiels
choses. De cest nature sont tous Francheses: come ſi hom
ad Warren ou Purlieu en le terre de un autre, & apres pur-
chase la terre cest vnitie de possession ne Extinguish les Fran-
cheses, mes il auera eux en la terre demesne. 28. H.8. Dier 30.
b. 16. Eliz. Dier 327.a. 35.H.6.56.a. iſſint est de Waife, Stray,
Wreck, Leet, &c.

3 Aupy, comment que chose soit part des profitz de terre, et
payable p tel person tantum que ad le terc, vnoſore ſi tel chose
ad son commencement & originall pur aucun Personall respect,
& nemy en respect del Terre, & iſſint le person est ſolemēt charge,
& nemy le Terre, tel chose ne sera ſubiect al Extinguishment
per vnitie de possession: & de cest nature font Annuitie, Dismes,
Proxies.

1 Si Annuitie soit grant en fee per apt parols, de charger l'
heire, ou successoz, comment que le heire ou successoz ne serront
charge sans Assetz de terre, vnoſore, ſi grantee del Annuitie
enter en cest terre, ceo ne suspend, ne Extinguish le Annuitie:
car le terre n'eft charge, mes le person en respect del terre, car
ſi le terre fuſſoit charge, ne serroit Annuitie tantum, mes rent
charge, & serroit recouer per diſtreſſe & auowrie, quel remedie
la ley ne don pur un meſte annuitie. Aupy ſur assignement ou-
ster de tel annuitie, atturtaſſit serroit necessarie, que ne be-
ſoigne ſur assignement del annuitie, come eſt note per Yaxley
21.H7. 1.b.

Cest point eſt fait plus cleere, 10.E.4.10.a. Abbe port Sci-
re facias vers vicar, ſur Judgement en Annuitie en vers le
predecessor del vicar, le defendant dit, que le Annuitie iſſint
hors del Mannour de B. & les diſmes, oblations, & ob-
uentions del vicarage, quel mannoz & diſmes font le vica-
rage,

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rage : Et que le Pl. ad enter en 43. acres parcel delmannoz, et ad pris les dimes, Judgement sil execusion doet auer. Et tout le Court tient que nest plea, pur ceo que cest recouery fuit sur briefe de Annuitie : car en briefe de annuitie le person solement est charge, et nemp le terre, per que adire, que il ad enter, en la terre, ou per son suit appiert que le rent ne ieuist hors del terre, nest plea. Et est auxy la resolute, que en Annuitie vers l'Abbe, sur title de prescription, nest plea, que le Pl. ad enter en parcell des possessions del Abbey. Et en annuitie vers heire, comment que il ne sera charge sil ne ad per discent, vnoze nest plea, adire, que le Pl. ad enter en le terre discendue.

Mes 2. Henric. 7. 1. le case est plus fort : Person del Eglise fuit charge oue annuitie al autre Person per prescription : le Personage, hors de quel l'annuitie fuyt payable, fuit appropriate al Priorie des Aliens, quel Priorie esteant supprese per Edw. 3. fuit grant per Parliament al Henr. 5. Apres Edw. 4. graunt le Personage improprieate al Dean de Saint Stephens, & que briefe de Annuitie est port y l'Person que auoit l'annuitie y p'scription. Et l'opinion du Court la fait, que l'annuitie nest extinguisch per le graunt del Personage al Henr. 5. p Act de Parliament, comment que ne soyt Sauing de ceo, & que cest annuitie nest done inclusiue oue le Rectorie, car le Rectorie ne fuit charge oue le annuitie, mes le Person del Rector, tantum. Et comment que le payment de cest Annuitie soit suspend en maines del Roy, vnoze quaunt le Roy ad graunt le personage ouster, sera renouie. 2. Quaunt al Dimes, ceux sont part des profits de terre, & sont prouenant, et renouant, de, et hors del Terre, vnoze ne serront extinct, per buntie de possession, pur ceo que sont Originalment due en Personal respect. Car le Ignorance, & Weakenesse des lay persons, que besoygne de auer Instruction, et confirmation en matter de Religion, fuit le Original cause del payment de Tythes. Et le Person de esglise ne clame Tythes en respect del terre, mes en respect del person de parishioner. Et que buntie de possession ne extinguisch Tythes, Vide 30. H. 8. Dier 43. 32. H. 8. Br. Dimes 17. Cest case de Dimes est un Paralell del case de proxies, & concurre oue ceo en tous points. Car sicome Instruction fuyt le cause de payment des Dimes, ieuill Visitation

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tation que fuit toutz foizs accompany oue instrucē Lrl.ca. de Frankalmoigne 30.b. fuit la cause d Proxies. Et s'come dismeys sont oze due et paialble al lay persons qui ont purchase im p-
riate Rectoies, comit que ils ne donont aucun Instruction, issint Proxies sont due et paialble al Ordinaries hoys del im-
p-
riations et Religious measons dissolued, comit q lour Vi-
sitation cessa. Et s'come nul poet prescribe d non Decimando,
come est communement dit in nre Liures, issint le Cannon
Ley ad vn rule, Qd nulla est aduersus procurationem præscrip-
tio. Instit. Iuris Canonici lib. 2. cap. de Censibus. Et p c Proxies,
q ressemblont Tithes in aux points, poeut estre bni compare a
eux in cest point, viz. q ne serront subiect al Extinctioun p
vnite de possession.

Cest case dependoit plusors Termes sur demurrer, q fuyt
toyme in temps de Sir Edmund Pelham chiese Baron, a adiudg
in temps de Sir Humphrey Winch. Et fuit argue p le Attor-
ney generall p le Roy, et p Henric Linch del midle Temple, p
Sir Ambrose Forth.

Mich



Mich' s. Iacobi, in Banke le Roy.

Le Case del Customes payable pur Merchandises.

Information fuit exhibite en Banke le Roy, per le Attorney general, vers le Maior, Viscounts, & Citisens de Waterford, en que il monstre, que le dit Maior, Viscounts, & Citisens, pur le space de vn an deuant, ont receuie, et conuert a lour prop vse, le Grand & Petit Customes, & le Subsidie de Pondage, de toutz merchandises, importes & exportes, tñ & de le port de Waterford, & que ils ont auxy fait ordigne vn Custumer, ou Collector des Customes, vn controllor des Customes, vn Searcher, & vn Gageor, deins le dit port, al prejudice del Roy, & sans aucun Garrant : et sur ceo il prie Processe vers le dit corporation de faire eux bener et responder, Quoy warrantz ils ont pris les ditz customes & Subsidie a lour prop vse, et ont create & ordaine les officers auantedit.

A cest Information ils pledont vn speciall plea, en que ils instituent le receuuing des ditz customes & Subsidie, et le ordaigning des ditz Officers, per vertue de 4. severall Charters.

Per le primer charter, dat 3. Nouembris, Anno Regis Iohannis, nono, Le dit Roy grant al citizens de citie de Waterford (que adonques furent lour nosme de corporation) Customam vocat le Murage, de omnibus rebus venalibus & Mercimonij, infra dictam Ciuitatem emptis, seu venditis,

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ita bene, & integre, sicut Burgenses villaæ suæ Bristol habebant, vel melius habere conseruerunt. Et ills auerront in facto, que les Burgelles de Bristol, al temps del dit Graunt, auoent le dit custome de Murage, de toutes choses et Merchandises achates et vendues deins le dit Ville de Bristol.

2 Per le second charter dat 6. Maij, 1. Henric. 5. le dit Roy graunt al Maior, Bailifes, & citizens del citie de Waterford (per que nosme ills fueront donques incorporate) custumam eiusdem ciuitatis vocat. Le Cocquet, capiendam per manus dicti Maioris & Balliuorum imperpetuum absque aliquo computo, &c.

3 Per le tierce charter dat 12. Maij, 3. Henric. 7. le dit Roy graunt al Maior, bailifes, & citizens del citie de Waterford, & successoribus suis, quod ipsi & successores sui, & eorum quilibet, ac omnes & singuli ciues & inhabitantes eiusdem ciuitatis Waterford, qui tunc erant, & qui pro tempore futuri essent, & eorum quilibet, pro bonis catallis & merchandisis suis quibuscunque, infra ciuitatem suam Waterford præd. ac portum, præcinctum, & libertates eiusdem, & in omnibus & singulis alijs portibus, creejs, & locis, infra terram suam Hyberniæ, de nova custuma, viz. de præstatione sine solutione duodecim denariorum de libra, Pondagio vulgariter nuncupato, erga dictum dominū Regem, hæredes, & successores suos imperpetuum sint quieti, exonerati.

Et ut Maior concursus tam hominum quam mercandistarum ad eandem ciuitatem poene in extremæ desolationis & paupertatis abyssum deductam, de cætero confluat & accrescat, ultrius dedit & concessit præd. Maiori, Balliuis, & ciuibus, &c. Quod omnes & singuli mercatores, & homines, tam indigenæ, quam alienigenæ, & eorum quilibet, ad prædictam ciuitatem suam Waterford, ac portum & præcinctum eiusdem causa mercadizandi venientes, pro catallis & merchandisis suis quibuscunque, infra ciuitatem prædictam, & præcinctum & libertates eiusdem, de dicta noua custuma, sive pondagio, erga dictum Dominum Regem, hæredes, & successores suos, similiter sint quieti & exonerati imperpetuum.

4 Per le 4. charter, dat 8. Februar. 11. Elizabeth. La dit Roigne grant al dit Maior, Bailifes, & citizens, & successoribus suis, quod imperpetuum, annuatim, de seipsis eligere, valeant, & possint,

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possint, Scrutatorem, Geageatorem, & alios officarios & ministros quoscunque, infra eandem ciuitatem & libertates eiusdem, vsuales & necessarios, que auerunt que le customer & controller de customes fueront necessarie officers deing le dit city, p' ceo que le Roy H. 5. p son charter auantdit, ad grant a eux le Cocquet custome. Et ils concludont lour plea, que per le dits warrants, ils ont receutie les dits customes et subsidie de Pondage, a lour proper bte, & ont fait et ordaine les dits officers deins lour citie. Et sur cest plea le Attorney du Roy demurre en Ley.

Et en arguunt de cest demurrer, 2. principal matt's furent considerer; 1. quel maner de dutys, customes, & subsidies sont, et lour original & difference. 2. Le quel les dits charters sont sufficient warrants al corporation de Waterford, a receuoir les dits customes et subsidies a lour proper bte, et de faire customer, controller, searcher, &c.

Quant al primer matter, pur le explanation de cest learning de customes, fut primitivement obserue. Que les dutys payable al Roy hors de marchandises exported ou imported, sont de 3. kinds: 1. Customes: 2. Subsidies: 3. Imposts ou impositions. Queux furent destine, & diuide en cest maner.

Customes sont dutys certaine, & perpetuall, payable ^{L. M. "tale. de Mari. pt. 2.} al Roy come inheritance de son Coronement, p marchandises, transports de trauers le Mer, del un Realme en auter. Car p choses vendible p voy de merchandise, caries de un port, al auter port, deing mesme le realme, p mer ou p Terre, nul merchant est tenus de paier aucun Cu-
^{cap. 6. in Haymanus L. T.}
^{pa: 76.}
stome.

Ceux dutys appell customes sont diuide en 3. kinds.

1. Magna & antiqua Custuma.

2. Parua & noua Custuma.

3. Prisage & Butlerage.

Et en toutz ceux la Coronement ad un certaine & perpetuall inheritance.

1. Le graund & ancient custome est payable hors d' nature ou homebred commodities de 3. Sortes: viz. wool, woolfels, & hydes. Et est certainty h. 5. b. 11. d. pur un sacq
^{B. 2}
^{de}

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de wool. vi.s.8.d. p 300.woolfels.6.s.8.d. p vn Last de
Hyde, xiiij.s.4.d. Et est destre note, q chescun sack v wooll
contain 26. stone, et chescun stone 14. pound, p q l Last de
hydes est 20. dicker, q chesc dicker x. hidies.

Ceo est le ancien custome payable p chesc Denizens p l
exportation des cōmodities auantdits mes les merchāts
Strangs payont vn tierce part plus, p remission de pri-
zes, q auts priuiledges a eux grants p le chart de 31.E.1.
Dier 1. Eliz. 165.b.

2 Le Nouel & petit custome est 3.d.de le pound payable
p Merchants strangs tantsolement, p tous commodities
peux imported & exported come est expresse in l dit chart
De 31.E.1.

3 Prisage est custome prize de wineg v tous sortes, et
est en certenty, 2. tunnes de Winehoys de chescu Rief ladē
oue, 20. tunne ou pluis, p vn tunne destre prise deuāt l mast
del Rief, q l aut darriere le Mast. Et p ceo q cest custome
est part del merchandise imported, q Prise in precic est appelle
Prisage.

Et cest custome de Prisage fuit payable en Engleterre p
tous merchants Denizens, q Aliens, devant le dit chart
de 31.E.1. p q le Roy remise al Merchants strangs tous
prizes: q en mesme le chart est expresse que en considera-
tion de ceo, les Merchants strangers ont grant v payer al
roy q les hēs Nomine custume, 2.s. de quolibet Dolio vni,
quod adducent vel adduci facient infra regnum, &c. q custom
v 2.s. del tunne, est ore, en Engleterre appelle Butlerage, q pa-
iable la p tous Merchants strangers, vi.stat.de extreat.ad
Scacc. 15. E.2.

Et ceo est le nature de ceux seuall dutie, qui sont prop-
ment appelle customes,

¶ur le Originall de ceux customes.

1 Le dit auncient & graund custome est parcel v l auncient
enheritance de la Corone, q cy auncient que la Co-
rone mesme, Inheret sceptro, q est due de communon droit, et
per prescription, q nomy per graunt ou benevolence des
Merchants, ou p Act de Parliament. Dier 1. Eliz. 165.b.
Et ceo primierment fuit raise hoys del Ratiue, mover, et
primier commodities del nostre Pais, viz. Wool, woolfels,
et Hydes, queut accremonnt per les autres depasturant la
terre,

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terre, saung industrie des inhabitants, & sont R euer à les Naturall riches de Engleterre. Car inuention & industrie des homes, ont troué & produce Tynne, & Plombe, & Drapes, & Iron en seueral Ages. Mes les 3. p[re]mier commodities, viz. Wooll, Woolfels, & Hydes fueront proprement & anti-entment dit, les Staple commodities del Realme (coment que per le statute de 27. E.3.c. 1. Plumbe soit auxy declare destre vn Staple commodity, & pur ceo cestuy que oblige en Statute staple, conust que il est indebt, Pro lanis, corijs & plumbis, &c.) Et fueront appell Staple commodities, pur ceo que fueront dest[em] port al Staple del Roy, destre exported la, & nemy ailloz, p[er] le melior Collection des Customes due al Roy. Vide les Statutes de 27. E.3. cap. 1. & 43. E. 3.c.1. On est expresse en queur Villes de Engleterre, Ireland, & Gales leg Staples del Roy, fueront estableish pur le exportation de ceur commodities. Et appiert auxy per diuers statutes, que Caleys fuit aucun foitg appoint pur vn general Staple, vnoce ceo fuit toll & oustet arrete, & les antient Staples reestablish.

Mes pur ceur, 3. p[re]mier commodities tantsolement viz. Wooll, Woolfels, & Hydes, le dit antient & certaine Custome fuit due & payable. Car pur Plumbe, coment que fuit dit vn Staple commodity, le petit Custome de 3.d. sur le pound tantum fuit pay, come appiert per le statute de 27. Ed. 3. cap. 1. Et in libr. Rubro Scaccar. hic fol. 8.a.

Et que le Roy ad estate de enheritance en cest Graund & Antient Custome, appiert pleinement. 31. H.8. Dier 43. b. ou estdit, que Custome est inheritance del Roy per course de Common ley, & Subsidie est vn taxe assesse per Parliament. Vide auxy, 1. Ma[re] Dier 92. ou le Roy E.6. ad grant licence al vn Marchant stranger, de transporter tousg Marchandises payant pro Customis & subsidijs tot & tantas denariorum summas, quot & qnantas ascun Anglois marchant ou Denizen payeroit, & non ultra. Et fuit resolute per tousg les Justices, que apres le mort del E. 6. le grant fuit done pur le Custome, & boyde per le Subsidie: pur ceo que le Roy ad enheritance en le Custome, come prerogatiue annex a son Coron, & en les Subsidies il ne auoit estat soylez pur son vie, per act de Parliament. Illint. 9.H.6. 12.2. La Roigne ad part de la Dowry assigne, Ex magna Custuma

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de

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de London : que est arguunt, que le Roy ad greinder estate en le Graund Custome que pur son vie demesme : Et p ceo, le opinion de Babington la, que le Roy nad enheritance en le Grand Custome, mes en le Petit custome tantum , ne ad aucun colour de reason. Il s'int per le estatute de 18.Hen.6. Est prouide, que les Gages des Justices serront Perpetualiter pay hors des primer deniers prouenant des Customes, que ne puillot estre, si le roy ne auoit estate de perpetuitie en les Customes¹. H.7.4.a. D'arrainement, est un rule infallible, que si home ad chose de common droit, & per prescription, que il ad estate de fee simple en mesme la chose car de particular estate le commencement poet, & doet estre monstre,² 1.H.7.15.a.

Mes pur ceo que chescun chose que est due de communon droit, et p prescription, doet auer reasonable cause de Commencement, fuit note & obserue que, cest Custome fuit primerment pay al Corone, pur 4. principall causes, ou reasons.

1 Pur Conge de departier le Realme, & de carrier les commodties del Realme hors de ceo, Vide Dier 1.Elis.165.b. & le estatute de 18.E.3.cap.3.

2 Pur le interest que le Roy ad en le Mer, & en les Branches de ceo, 22. Assis. pl.93.15.Elis.Dier 326.b.

3 Pur ceo, que le roy est Gardein de tous les Ports & hauens del Realme, quz sont Ostia seu Iauae regni, & le roy est Custos totius regni.

4 Pur waftage, & protection des marchants sur le Mer, vers les enemis del Realme, & vers Pirats, qui sont commun enemis de tous Nations.

2 Le petit & nouel Custome payable per Merchant strangers solement auoet commencement en temps, Ed.1. Car devant cest temps, les dutys payable per Merchant strangers p tous Forein commodities imported (except wines) & pur tous Native commodities exported(except les ditg Staple wares, de Wooll, Woolfels,& Hydes) fueront buncertain. Car le roy per son prerogative Prisot a so vise, & a son grice, tant, & tiels postions de lour marchandises, grant il ad besoigne, per nosme de prises, queux fueront tous foitg buncertaine.

Mes le Roy E.I. per son Charter dat' 1.Februarij ansi 31.

De

payable pur Merchandises.

10

de son Roigne, en fauoir des Marchant strangers, & d' tra-
her leur commerce. Remit a eux tous prises, et graunt a
eux diuers autres Priviledges. Et pro supradictis libertati-
bus obtinendis, & prisis remittendis (ceux sont les parolz del
charter) supradicti Mercatores vniversi & singuli pro se, &
omnibus alijs de partibus suis, concorditer & vnaimenter con-
cesserunt q'ils payeront al royst & ses heires Tres denarios de
libra p tous Merchantisles importez ou exportez p eux,
come est expresse plus particularment en le dit charter, que
est destre troue en le office de chiefe Revenemgancer en le
Escheker del Engleste, & in libro Rubro Scaccarij hic. Et
cest charter del E. 1. en tous points, fuit ratifie & confirme
p act de Parliament, 27. E. 3. c. 26. Et ceo est le originall
del petit Custome.

Mes est destre note, que cest petit custome p Foraigne
commodities, fuit accept per le Roy, quaunt lorsque petit
quantity de tiels foraigne wares fuit importen Engleste.
Car en temps Edw. 1. Et appes ceo, en temps Edw. 3. les
natue commodities de Englesterre exportez fueront de
greinder quanticie & value per 2. parts de 3. al meines,
que les foraigne marchandise importez: per que le royst
E. 3. rasoit cy grand reuenue hoys del native commodities
de ses dominions: que est note de bone husbandrie en cest
roy. Car Oportet Patrem familias Vendac e esse, & non Brac-
cem. Come Cato le seignior disoit. Mes ore est tout cōtra-
ry: Car a cest temps, le Outgate & meind que le Ingate: les
foxeine wares importez sont de greinder quanticie & value
per 2. pts que nostre natue commodities exportez. Que
est graund honte a nostre Nation, destre issint enamoiz ou-
les Mercery & Grocery wares importez per strangers, & d'
expender sur eux plus que le value de tous les Staple &
real commodities de nostre Pais: que sera en fine le ruin
del Commonwealth.

3. Prisage de wines, est auxy custom due p prescripti-
on, & parcel del antient inheritance de la corone. Et que le
Roy ad inheritance en le Prisage de wines, appert p
les charters graunts al citizens de London, & al eur de
les Cinque Ports destre discharge de Prisage entouz
Ports, a tous iours, Vide statut 1. H. 8. cap. 1. Et le cou-
tre de Oxmond ad estate de inheritance en le prisage de
wines

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wines en cest Realme per graunt del Roy. Et le charter de London fuit allowe en cest point en le Eschequer de Engleterre, 44. Eliz. Mes le questiō la fuit, si un Citisen de London q̄ ne ad famelie, ne pay Scot & Lot, mes sojourne en le mealon dun autre, auera le bennet del dit Charter. En le argument de quel Case, Coke donques Attorney General misoit cest difference de citisens, viz. que il y ad citisen Nomine, citisen Re, & citisen Re & nomine. Mes fuit resolute que solement le citisen Re & nomine, viz. cestuy que est freeman de London, & est auxy enhabitant, & pay Scot & Lot la seure free de Prisage per le dit Charter. Pur le original de Butlerage que est pay per Merchant strangers, ceo auoit commencement per le Charter de 31. E. 1. come est auantdit, & est limit desire pay al roy & ses heirs en perpetuitie.

Et ceo est le Nature, Originall, & Difference de les aum-
tient Duties payable pur marchandises, queux son pro-
prement appell Customes, & sont le enheritance de la Co-
rone.

SVbsidies auxy son duties payable pur marchandises ex-
ported & imported, mes sont grant per act de Parlia-
ment Dier 31. H. 8. 43. b. 1. Mar. Dier 92. 2. Et sont de 3.
diuers sortes, accordant al diuersite des commodites, &
sont appell.

1. Aydes ou Subsidies, estant grant hors des dits natue
commodites, viz. Wooll, Woolfels, & Hydes, ultra & p-
ter le antient Custome auantdit.

2. Tunnage, grant hors de Wines de tous sortes, ultra &
pter le Prisage, & le dit Custome de 25. de Dolio grant p
le Charter de 31. E. 1. oze appell Butlerage.

3. Pondage, grant hors de tous commodites imported
& exported, except Wines, & les Staple commodites
auantdit, & payable per Merchant strangers, ultra & p-
ter le Petit custome.

Pur le Original de ceulx duties.

1. Aydes & Subsidies payable hors des dits Natue & Sta-
ple commodites exported, ne fueront souenfois graunt
per Parliament, devant le temps del E. 3. mes a cest Roy
pur mainten ance de ses Guerres en France, per Parlia-
ment

payable pur Merchandises.

II

ment, i 4.E.3.(que fuit le primer an de son raigne à France) vn Aids ou Subsidy fuit graunt de 40.£. hors de chescun Sacke à wool. 40.£. à 300. Woolfels, & 4.L. hors de chescun Last de Hydes. Et ceo de continuer pur vn an tantum, & que apres les Merchants paieront forisque l' auncient custome.

Apres ceo p Parliament 13.E.3. vn Subsidy fuit grant al dit Roy de 50.£. sur chescun Sacke de wool. 50.£. sur chescun 300. Woolfels, & 5.L. sur chescun Last de hydes.

Per Act d Parliament 31.H.6. vn Subsidie fuit grant al dit Roy de 43.£.iiiij.£. hors de chescun sacke de wool, et 43.£.iiiij.£. de chescun 240. Woolfels: mesme apres en meisme l' Parliament cest subsidie fuit abate, & reduce al 33.£.iiiij.£. pur sacke de wool, & 33.£.4.£. pur 240. Woolfels, & l' payement limit pur 5.ans tantum. Il s'int que ceus Aids ou Subsidies ne fueront del vn certaine quantite, ou continuance, jusques al temps del E.6. a quel Roy, en le primer Parliament de son raigne, fait grant vn Subsidie de 33.£.4.£. de chescun Sacke de wool. 33.£.iiiij.£. p chescun 240. Woolfels, & iii.£. vij.£. viii.£. de chescun Last de Hydes exported per Denizens. Pur chescun Sack de wool exported p Aliens, iii.£.6.£.iii.£. et pur chescun 240. Woolfels, 3.L. 6.£.8.£. & pur chescun Last de Hydes, 3.L. 13.£.4.£. Et cest subsidie grant de continuer durant le vie naturall del roy: & puis le mort de cest roy, mesme le subsidie ad estre graunt al Q. Marie, Q. Elizabeth, & al nostre Seignior le roy, que ore est, durant lour severall vies per severall Actes de Parliament.

2 Tunnage, que est subsidie hors de wines à toutes sortes, fuit primitivement graunt per Parliament 5.R.2. ou 2.£. de chescun Tunne à wine desatre imported en Engleterre, fuit graunt al Roy pur 2.ans, & ceo fuit pur maintenance à vn fleete sur le Mer, a supprester les pirates. Mes apres, p Parliament 3.Ed.4. Tunnage fuit graunt al cest roy pur terme de son vie naturall en cest manner, viz. 3.£. pur chescun Tunne de wines, & (ouster ceulz 3.£.) pur chescun tunne de sweete wines, 3.£. plus. Vide statut. 12.E.4.cap.3.£. cest subsidie fuit apres grant al H.8. & E.6. que cest addition en temps E.6. que de chescun Awme à Reinish wine auxy xii.£. sera pay: & puis le temps del E.6. cest subsidie à Tunnage ad

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ad estre grant en Engleterre p seuerall Actes de Parliament
al M. Mary, M. Elizab. & al nostre seignior le roy que ore est,
durant lour seuerall naturall vies.

3 Pondage que est subisdie grant hors de tous commo-
dities exported et imported, except wines, et les auntient
Scaple wares, vt supra, & payable p toutz merchantz De-
nizens et Aliens, est vicesima pars del valew des Merchan-
dises, viz. xij d. de le pound, et fuit primerment graunt per
Parliament en Engleterre 31. H. 6. durant le vie de cest
Roy : quel graunt fuit immediatement resume. Mes ap's
ceo, viz. 3. E. 4. cest subisdie de Pondage fuit graunt al dit
Roy durant son vie : vide stat. 12. E. 4 cap. 3. & puis mesme le
Subsidie fuit graunt al Hen. 8. durant son vie, & mesme le
grant ad estre renew al E. 6. M. Marie, M. Elizabeth & al no-
stre seignior le roy que ore est, durant lour seuerall vies, p
seuerall Actes de Parliament en Engleterre.

Mes icy en cest realm de Ireland le subisdie de Pondage
ad commencement en cest manner, Anno 14. Ed. 4. vn fra-
ternite des Armes fuit erect p acte de Parliament, consistant
de 13. plus honorabile & loialment disposed persons en les
Counties de Dublin, Kildare, Meath, & Louth: Et vn certaine
number des homes a chival, oue lour pages et des archers
a chival fuit assigne a eux, oue certaine entertainement et
Gages payable al chescun des ditz homes a chival, et ar-
chers. Dueux Freres des Armes, oue lour dit retinew sront
tous temps prist a defendre le English pale encontre Re-
bells et Outlawes. Et p l paiment des gages des ditz ar-
chers, & homes a chival, fuit enact, que les ditz freres des
Armes & lour successors aueront, xij d. de le pound de toutz
merchandisez imported et exported, hors de cest Terre de
Ireland, Hides & Wines, & les merchandisez del freemen
de Dublin & Drogeda solement except.

Appes 10. H. 7. en le Parliament tenus p Sire Edw. Poy-
nings fuit enact, que p tant que le dit xij d. de le pound grāt
al dit Fraternity (que est la appel le Fraternity de S. George)
fuit expend et conuert al priuat bles, et nemy en discharg
de publicke suice, p ceo le Roy aueroit le dit Pondage pur
5. ans ensuant, et q toutz autres grants fait del dit Pon-
dage soient repeale et adiudge void, sc.

Les ditz 5. ans esteant expire, viz. Anni 15. Hen. 7. nouel
Pon-

payable pur Merchandises.

12

Pondage fuit graunt per act de Parliament al dit Roy ses
heires et successors in perpetuity, oue vn Prouiso, que cest
act ne serroit prejudiciale al freemen de Dublin, Waterford,
& Drogeda esteat free p Birth, Mariage, ou Prétishood, &c.
Et tllint le Roy ad estate de Enheritance en cest Subsidy
de Pondage en Ireland, ou il n ad ceo forsque duront son na-
tural vie en Engleterre.

3 Imposts ou Impositions sot l Tierce kind de dutiez pay-
able vnt marchandisez, & sont asunfois rates & as-
sees per Parliament, & donques sont en nature de Subsi-
dies, & alcun foits sont impose per Prerogatiue Royall, pur
supporter les necessary charges de la Corzone, & donques,
Nihil in agis justum est, quam quod necessarium est, come vn
auncient Senator de Rome disoit.

Le Impost sur Wines in cest Realme, fuit primerint as-
sees p Parliament, & limit destre pay par certaine terme d
ans, quel esteant expire, ceo est ore continue per prerogatiue
del Roy.

C Eux, sont les dutiez payable al Roy de Engleterre p
l exputtation & importation de marchandisez. Et co-
ment que cest reuenue del corzone ad este grandement
improoue en cest darcene age, vnoz si les customes, subsi-
dies, & impositions d Engleterre sont compare al dutiez et
paimentz de cest kind, en forein countries, seront troue de-
stre moderate & sozt reasonable.

Les auncient Romaines (car cest reuenue paizable hors d
merchandisez, est le plus, ancient, honozable, et reasonable
que appartient al alcun Prince ou State) auoent ceuz du-
ties p nosme d Vectigalia, a mercibus euctis, & inuctis, qux
l Emperour Iustinian appelle Exagogica & Isagogica. Et tou-
chant la nature d eux, les rulez de nostre ley sont agreeable
al ceuz d la Imperial ley.

¹ Nous diomus, que custome est l ancient enheritan-
ce de la corzone D engleterre, tis diont, Vectigal origine
ipfaius Cæsarum, & Regum patrimoniale est. ² En nostre
Ley, Wafrage & Protection de Merchants sur le Mer, est
vn des principall causes de paiment de ceuz dutiez : et en
la Ley del Empire, Primaria Vectigalium causa, ac ratio fuit

vt

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ut plana, tutaque mercatori prætereunti itinera præstarentur. Et Plin. Lib. 19.c.4. Dit, Merces prætiosæ, ut ex India, Arabia, Æthyopia, tuto à mercatoribus in Europam conueherentur, necessario classem parandam esse aduersus Piraticas incursiones. Inde maritimi exercitus alendi causa, Vectigal Rubri maris institutum.

Et cest Vectigal, octaua rerum pars erat, & pur ceo fuit un sort des publicanes, queux fueront appell Octonarij: mes les Merchants queux auoent le priuiledge de citizens de Rome, paieront forsque vicesimam partem ou Pondage, & les Publicans ou collectorz de cest custome, fueront appell Vicesimarij.

Et ceo fuit le auncient custome payable per Merchants detas le estate del Empire. Et en Britanie, deuant que cest Island fuit fait Prouince subiect al Empire, est credible que les Merchants payeront greindre Rates pur Exportation des commodities, que ils payont ore. Car Strabo dit, Britanni Vectigalia tollebant graua carum rerum, quas in Galliam, tametsi breui maris trajectu, importabant.

Mes a cest iour, est certaine, que en auters Realmes de Europe, les customes sont plus haut et heaby que nos tres.

En Spaine, le Roy pris octauam partem de ses proprez subiects, mes & Merchants Strangers il prisit ascu foits le cinque part, alcun foits le quart pt del value de lour marchandise.

En France, les customes payable pur Strangers augmentaunt al huict de Cent. Bodin.de Republ. libr. 6.ca. 2. Mes les impositions & gabels q le Roy la pris de ses subiects p Sel, Wine, & Blees, et toutes choses vendible sont extraordinaire, et fort excessive. Il s'ent poet estre dit del grand Duke de Tuscany, & auters States de Italy.

Le grand seignior d Turke pris le tenth pt de Merchant Strangers, et le huit pt ou Pondage de ses subiects.

Quant a les Offices queux ont a faire ou le les customes.

Le customee fuit le plus auncient, & al primes le sole Officer, que fuit le collector des customes, et accomptable p eux al Roy. 9.H.6.12.b. 1.H.7.4.b.

Apres

Payable pur Marchandises

13

2 Apres en aid de customer p trouver les concealements et subtractions des customs & subsidies, & p leiser marchandises forfited, le Searcher fuit ordaine.

3 Donq's p ceo que le customer fuit accomptant al roy, mes ne puilloit estre charge forsqz y son proper livet d' Cocquets, ou son gath controller fuit assigne a lui.

4 Darrainmt, p discouer et preuenir les frauds d' touts eurz, un office de Superuiseur ad estre erect.

C Eux diuersitiez touchant la nature de les several dutties payable pur marchandises, esteant declare & agree, le 2. matter fuit consider, viz. Si les points de les several charters plead, come auant est monstre, p le corporation de Waterford, soient sufficient warrants a eux, de receuier, a lour proper vse, les dit's customs & subsidies, & de faire les dit's officers d' customer, searcher, et controller des customs.

Q uant al primer charter de le Roy John, p que il grāt al dit Corporation, Custumam vocatam Le Murage, de omnibus rebus venalib' infra dictam ciuitatem empatis seu venditis, adeo bene & integre sicut Burgenses villez de Bristol habebant, &c. Fuit resolute, que per ceulz parolz nul custome ou subsidy est grant a eux, pur diuers reasons.

1 Pur ceo que Murage nest rien que Toll, payable p reparation des Mures, hozz de choses vend en Market ouvert per retaile, N.N. Br. 228.d. ou custome est pay pur marchandises imported ou exported a trauers le Mer, et vend en grosse. Et est auty cest difference, que teli Toll esbent estre pay tousz dit's per cestuy que Achate le chose, et custome per Merchant que vend le chose. N.N. Br. 228.c. Et que Murage nest forisque Toll appiert per le Register, 159.a. En brief de Essendo quiet de Theolono. Et per l' dic charter 31.E.1. p que tousz merchantz strangers sont assujet a Murage, Pannage, & Pontage, et uncoze tis paie le grand et petit custome. Vide auty Iehu Webbes case en le 8. part des Reports de le Seignior Cooke, 47.a.

2 Murage ne gist en grant, mes en prescription: car nulme aucun chose ne gisont en prescription, mes en grant,

C

come

Le Case de Mixt moneys.

come conusans de pleas, Catalla Felon.&c. 1. Henr. 7.22. b.
9. Henr. 7.20. a. Illint sont auters choses que ne gisont
en grant, mes en prescription, come d'auer free Garren en
auter terre, ou de prender Murage, Pontage, ou Picage. 13.
Henr. 4. 14. b.

3 Le Reference al bill de Bristol, est uncertain et vold,
pur ceo que nest tel Ville ou Burgh appell Bristol, en
cest Realme de Ireland, et le Ville de Bristol entend en le
charter, esteant en Engleterre, le auement que les Bur-
gesses de Bristol auoent Murage al temps de cest Graunt,
ne poet estre try icy. Autz ils doent auer en lour plea que
les Burgesses de Bristol auoent tel certain Toll ou Cu-
stome de chescun chose vendue & achate deins le Will, & que
ils auoent ceo per graunt del Roy, car donques le Refe-
rence fuist al certenty. Come est tenus 20. Ed. 3. Fitz A-
uowrie 120. En Quo warranto port en Eyre, vers Bailifs
& comminaltie de Lancaster, ils pledont vn charter del Roy
John, que graunt a eux touts franchises que le Burgh
de Northampron ad, et pur ceo que nul franchise fuyt la
expresse, ou monstre de Record, seisure fuit agard des fran-
chises.

Want al 2. Charter, p que M.5. grant al Maior, Bai-
liues, & Citizens de Waterford, Custumam dicta ciui-
tatis vocat. Le Cocquett, capiendam per manus di-
cti Maioris & Balliuorum in perpetuum: et comment que fuit
object p le Attorney Generall, que le cocquett nest forisque
acquittance ou Bill testifiant que le custome est pay, que
fuit al pretres appell Cocquett, pur ceo que per tel bill, le
Merchant est de costuma quietus: Per quel parol le au-
cident custome, esteant vn speciall inheritance de la cozo-
ne, ne poet passer: et comment que fuit auxy object que
custome est payable per chescun severall merchant Denisen
& Allen, et pur ceo ne poet estre dit Custuma dicta ciuitatis:
tantost obstant que soit limite destre prise per maynes del
Maior & Baylies, vnozel l officier del roy, viz. le customer est
charge ou ceo, & ils doent auer allowance per Petition,
come est rule 1. H. 7.4. a. ou R.3. ad graunt Licence al cer-
taine merchants a transporter laines, &c. Et de ceo de re-
tainer lour customes, en cest case, nient obstant l dit grant,

leg

payable pur Merchandises.

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les Customers furent charge et accomptable pur les customers.

Uncore fuit resolute, que le antient Custome de wools, woolfes, et hydes fuit bien grant al dit corporation per les parolz de Custome vocat. le Cocquett. Car cest antient custome est communement appell, et conus, per nosme de le Cocquer Custome, en tous Ports de Engletere, & Irelad. Et custuma dictæ ciuitatis sera entend custome payable pur marchandisez in dicta ciuitate. Car fauorable interpretation sera fait de tielz grauntz solonque le usage et allowance. 10.H.7.14.a. Et pur ceo que le custome est graunt al eux, ils poent ceo collecter per lour proper officer, et le officer del Roy nest accomptable pur ceo, come en le dit case de licence de retainer, 1.H.7.

Quant al 3. Charter dat' 12. Maij 3.H.7. p que le dit Roy grant al corporation de Waterford, quod omnes & singuli ciues & inhabitantes dictæ ciuitatis, & omnes & singuli mercatores, tā indigenæ, quam alienigenæ de Noua custuma vocat, le Pondage, viz. de præstacione xij. denariorum de libra imperpetuum sint quieti & exonerati, &c. fuit resolute, que cest charter ne fuit sufficient warrant al eur, de receuier, a lour proper bse, le Pondage de tous marchants, denizeng, et aliens, deins le Port de Waterford. Et ceo pur 2. principall reasons.

1 Pur ceo que cest graunt tend al discharge de chescun particular Marchant, et ne dona le Pondage al corporation, 4.H.6.b.a. le Roy E.4. grant al Mayor et Burgesseis de Oxford, que ils ne serront Jures oue foreiniers, ne foreiners oue ceut, &c. Per totam curiam le s Burgesseis que sont impannell, quant ils sont demand destre Jures, poent montrer le charter, et pleader ceo, mes nemy le Mayor et corporation : a mesme lentent est 21. Ed.4.55. & 56. Le case de Norwich. Et si ceo fuit dit que si le roy grant al Abbe que tous ses possessions serront discharge d' Dimes grāt en Parliament (come le Recount de Edingtons case est 19. Hen.6.63.a.) Le Abbe en cest case, ne poet collecter les Dimes de ses tenants, et retainer a son prop bse ; Ilint ou le Roy ad graunt al corporation de London, que les citizeng de London serront discharge de Prisage, le corporation,

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ration per force de cest graunt, ne prist le prisage de les
citizens. Mes chescun pticulair home auera le benefit de le
charter, sil voet demander ceo, autrement nient.

2 Cest graunt fuit fait Anno 3. Henr. 7. a quel temps, le
Pondage que fuit graunt p Parliament Anno 14. Edw. 4.
al fraternit y de saint George, come deuant est monstre, fuit
en Esse. Mes apres, Anno 10. Henric. 7 cest grant al fra-
ternity de saint George fuit repeale per auter act de Par-
liament, a nouel Subsidy de Pondage grant al Roy p 5.
ans. Apres quel temps, viz. 15. H. 7. un autre Subsidy
de Pondage fuit graunt al corone en perpetuity, que est le
Pondage ore en question, ilint que le nouel Pondage
que fuit grant per Parliament, 15. Henr. 7. ne puilloit estre
graunt ou discharge p charter fait xii. ans deuant, viz.
3. Henric. 7. Car quaunt al Graunt en tel case, est tenus
22. Edw. 4. Fitz. Grauans 29. en le Abbe de Walthams case,
que le roy ne poet grant aucun parcel del Dismes del Cler-
gie, deuant que soit graunt per le conuocation. Et quant
al exoneracion ou discharge en tel case, cest point en le
case de Rector de Edington, 19. Henr. 6. 63. a. Aest rule, ne
resolute. Mes admitt que le Rector en cest case la serroit
discharge de Dismes per grant le Roy fait deuant le Par-
liament, vnoce ceo ne serroit rule de cest case, pur ceo que
en le graunt fait al Rector sont polx de future temps, viz.
que quant aucun taxe, tallage, ou tenth serroit graunt per
Parliament que il, ses terres, & chateux serront discharge.
Mes cest charter de 3. Henric. 7. parle de Noua Custuma
de Pondage doneques en Esse. Car ceo que est nouel, est no-
uellement past et neiny future. Et pur ceo cest charter ne ba
en discharge de autre Pondage, que serroit graunt apres
per act de Parliament. A cest entent, vide 34. Henr. 8. Dyer
52.2. qu est tenus que le Roy ne poet discharge penaltie del
act de Parliament, que est desre fait en apres. Come ou
roy grant licence al un de transporter Bell Metall, nient
obstant aucun statutes fait, ou desre fait al contrary: apres
act est fait, que prohibet le exportation de Bell metall sur
certaine paine: Le licence graunt deuant, ne dischargera
cest penaltie. Mes la est dit, que le Roy poet dispenser
une future chose en que il ad enheritance. Mes al temps
de cest charter graunt, viz. 3. Henr. 7. le Roy ne auoit en-
heritance

payable pur Merchandises.

15

heritance en le Subsidie de Pondage. Car le Pondage dom-
ques in Esse fuit grant al dit Fraternite de S. George, quel
grant esteant repeal, come est auantudit nouvel Pondage fuyt
grant al roy pur 5. ans, Anno 10. Henr. 7. Et apres Anno
15. Henr. 7. le Pondage, oye en question, fuit grant al roy et
les heires per Act de Parliament. Mes si le Roy ad eux
enheritance en cest Pondage al temps de cest charter grant
al Waterford, viz. 3. Henr. 7. le Discharge, sans question, ad
estre bone. Come le Roy poet grant que l'heir de son tenant
ne sera en Gard, ou que son Tenant ne sera puny en
cessauit. Car comment que ceux sont future & casuell choses,
huncore le Roy ad enheritance en le Seigniory al temps
36. Henr. 6. 48.

Auxi en plusors cases, comment que graunt del Roy Ex-
tent al future Temps, hncor sera entend des choses Præsēt
en Esse al temps del graunt. Come in 38. Hen. 6. 10. a.
Si le Roy graunt a moy libertes en tous mes terres,
ieo auera les libertes en les Terres queux ieo auoy al
temps del grant, et nemy en les terres queux ieo purchase
apres. Illint si le Roy grant liberties en tous mes De-
mehnes, & apres Tenancy escheat, ieo nauera les libertes
en le terre nouvellement escheated. Illint si le Roy graunt
Cacalla felonum quorumcunque, & apres p Parliament, un
act est fait Felony que ne fuit Felony devant, le grauntee
nauera les biens de person attainted de tel Felony. Illint
ou l'Evesque de Durham ad Iura regalia, & escheates de
Treason deing son countie Palatine, il nauera les terres
de Tenant en Taille attaint de Treason, queux sont for-
feict per le Statute de 26. Henr. 8. come est resolute, 12. El.
Dyer 289.

Et p ceo fuit resolute, que cest charter que exonerate les
Merchants de Waterford de Pondage, in Anno 3. Henr. 7.
ne poet estre extend p acquitter eux de nouvel Pondage que
fuit grant p Parliament Anno 15. Henr. 7. Mes q tous Merchants
Menzens et Aliens payeront Pondage en ce port,
torsque ceux que sont exempt p le prouiso del dit Act de
15. Henr. 7.

Quant al 4. charter, concernant les Officers des Cu-
stomes, fuit resolute que ou les customes et Subsidies
G 3
restaient

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remainont en la Corone, & ne sont bien graunt al dit corporacion, le Roy mesme appointera les Officers pur le collection et due answering de ceux Duties, nient obstant cest charter, que enable eux de creater tiels Officers. Mes en case ou custome ou subsidie est bien grant al corporacion, adonques le constitution de tiels Officers appartient a eux, a lour officers poent entermeddler ou taunt que est bien graunt a eux, et nient plus, mes ou lour charter va en discharge & exonerat tantum, ilz ne poent appointer tiels officers car ne sont necessarie en tel case.

Cest case dependoit plusors Termes en Bank le Roy icy, ou les pointz auantdit fueront resolute:mes duant aucun Judgement done en ceo, le dit citie de Waterford, & les autres Maritimes cities, et port towns de cest Realme, per speciall direction transmittent en Engleterre certain Agents, ou lour seuerall charters, al entent que tous questions queux ont estre moue touchant les Customes & Subsidies payable al Roy pur Merchandises en les seuerall Ports de Ireland, sur view des ditz Charters per les Judges en Engleterre, poent estre resolute & determinans auter fuit perenier le Roy, & les ditz Corporations.

Et sur ceo, Termino Michaelis & Iacobi, speciall letters del Seigniorz de prizy Counsell fueront direct al Sir Laurence Tanfeild cheef Baron, Baron Heron, Sir Io. Doddrige vn des Serjants del Roy, & Sir Henry Hobarte Attorney generall del Roy en Engleterre. Et auxi al Sir James Ley donques cheef Justice de Ireland, Sir Anthony Seintiger Master del Rolls, & l'Attorney generall del Roy en cest Realme iey: (queux servitorz de Ireland adonques fueront present en Engleterre, & attendant al Court, pur dispach des autres services) per queux letters, le dit Cheef Baron, & les autres fueront require, d'appeller devant eux les ditz Agents, & sur perusall & consideration en de lour seuerall Charters, de certifie lour opinions & resolutions, en queux des ditz Cityes & port Townes, les Customes & Subsidies payable pur Marchandises doent estre respond & pay al Roy, & en queux les marchants Denizens, ou Aliens, doent estre discharge

charge de païement de ceur duties, & pur quant, &c.

Et accordant a cest direction, les dits Agents fueront appoynt d'attender les dits Referres, oue lour charters et oue lour learned Councell, al Serjeants Inne en Chancerie Lane, al plusors iours en le dit Michaelmas Term: & la deuant le Seignior chief Baron, et les autres, les questions et pointz auantdit, surdant sur les seuerall charters de Waterford, fueront moue, & debate, & resolue, ut supra. Et diuers autres charters fueront produce, mes nul point de difficultie fuit moue sur aucun de eux. Tantsolement, Bolton Recorder de Dublin, insistoit fortment, sur un antient charter del Henr. 2. p que le dit Roy ad grant Burgensibus de Dublin, Quod sint quieti de Theoloneo, Pallagio, Pontagio, & omni contuetudine p totam terram nostram Anglia, Northannia, Wallia, & Hybernia vbiunque venerint ipsi & eorum Res, &c. Et il affirloit, que les parols de Theoloneum, & Consuetudo, fueront apt parols d'acquitter les Citizens de Dublin de le Graund et Auctient custome. Et pur le signification de le paroll Theoloneum, si cite le Text en Saint Matheus gospel, Cum autem prætergredierut Iesu, vide quendam sententem ad Theoloneum, &c. Il est interprété, que le Theoloneum est le custome. Mes a ceo fuit dit, que pur trouer le signification de Theoloneum en cest cas, ne besoigne de resorzer al interpreters del Ghospel, mes al interpreters del nostre Ley. Et que en nostre ley, le proper Term ou Parol de Art que signifie tel Royall ducie que est payable pur Marchandises croissant le Mer, est Custuma, & nemys Theoloncum: quel parol Theoloneum, en nostre ley, signifie rien forsque un Toll, & Toll (que est de-
rime del Theoloneum) nesci forsque un petty Duty payable en Markets & faires, per cest que achate le chose, ou Customa est payable p Marchant que est vendor. N.N. Br. 126.b. & p le Register, 260.a. un difference perenter Toll & Custome payable pur Marchandises appiert. Car en le breke d'acquitter les biens del Ecclesiastical person de Theoloneo, Pannagio, Muragio &c. est clause est mise, Non tamen merchandis aliquas non exerceat de eidem, issint le difference est apparant, & pur ceo il fuit ouer rule pur cest parol, Theoloneum.

Sunt al autre parol, Consuetudo, il dit, que ceo fuit
Nomme

definition of Toll

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Nomen æquinoctium et ad 3. significations. 1. Usage du temps dont memozy ne coust, est appel Consuetudo. 2. Antient rents et services, sont appel consuetudines. 3. Auxx les customs payable pur merchandises sont appel consuetudines. Et ceo appiert in Magna Charta, ca. 30. Omnes mercatores, nisi publicè antea prohibiti fuerint, habeant saluum & securum conductum, exire de Anglia, & venire in Angliam, & morari & ire per Angliam, tam per terram, quam per aquam, ad emendū, & vendendum, sine omnibus malis Tolnetis, per rectas & antiquas consuetudines Per quel parol consuetudines, il dit que les antient customs payable p' exportation de merchandises sont signifie. En mesme le sens (dit il) cest parol est vse en Bract. lib 2. ca. 24. Si cui concedatur talis libertas, quod quietus sit de Theoloneo & consuetudinibus dandis per totū regnum Angliae in terra & mari, & quod Tolnetum & consuetudines capiat, infra libertatem suam, de vendentibus & ementibus, statim erat quasi in possessione, & possessionē retinebit, cum Tolnetum & consuetudines receperit.

Il monstre auxx les copies de certain accoupts, conteins en les antient Pipe-Rolls en Engleterre, viz. vn de 15. Henr. 2. en ceux parolz, Gerualius Draper-Vicecomes Northfolk & Suffolk reddit compotum de 45 l. 16 s. 6 d. de consuetudine nauium de Oreford: & in magno Rotulo 5. R. 1. c^e entry est troué, Albericus de Billingesgate debet 72 s. 4. d. de consuetudine de Billingesgate & Butolphesgate, si que il conclude, que en antient temps, quant Henr. 2. fessoit cest graunt, le parol consuetudo signifloit la dutie del custome payable pur merchandises. Uncore il agree que a cest tout tiel special duties de prerogative, come customs sont, ne poent passer per tiel generall paroll de consuetudines. Mes auncient Grants ont tous faitz vn fauorable interpretation, solonque le vilage & allowance. Et sur cest ground il misse plusors livers, 14. H. 6. 12. 2. Del grant fait p H. 2. 34. Ass. p. 14. del grant b Will. Conqueror, 37. Ass. p. 5. 40. Ass. p. 2 n. 5. Ed. 4. 12. 1. 10. H. 7. 13. b.

Mes faitz resolue per le Seignior chiese Baron, et les autres Referees, que le dit Grant, que ils serront quieti de omni consuetudine, ne discharge eux de le graund Custome. Et principalment, pur mesme le reason, que ad estre vse del autre part, viz. pur ceo, que consuetudo est nomen
æquinoctium

equiuocum, & signifie plusors kinds de customes. Et iſſine eſteant generali paroll, ne vñques passerat cest ſpecial roial duty. Come ou le roy grant ommes pifcarias, & piftcations, roial fishings ne paſſont : Roy grant tousg Mines, roial mines de oz, & argent ne paſſont : Roy grant tousg Amercements, roial Amercements ne paſſont, 3. Ed. 3. iirz. 445. preſentment fuit fait vers Abbe, que il ad ſuffer vn poine deſchuer que il à ſes predeceſſor ſeigniorz del ville, ont uſe de repairet de temps dont memory ne court, &c. Le Abbe plead charter del H. 3. deſtre quit de reparation de toutes ponts, mures, & caufeys, & que cest charter ad eſtre allowe en Quo warranto, &c. Uncore cest plea ne fuit allow. Cat ceo fuit ſpeciall charge ou duty p' reaſon de ſon ſeigniorz, que n'eſt diſcharge p' c'eſt general clause. Cat ou ſont poit en grant le roy, que deſouth vn generall noſme, comprehend choſes roiall, & choſes base, ſerra prie en fauour del roy, & les base choſes paſſeront, & les roiall demurront en le cozone, Plow. Com. 333.

Et le ſeignior chiefe Baron miſoit vn notable caſe à c'eſt purpose, adiudge en leſchequer de Engleterre, que fuit tiel. *Rate of y' customs in Harry Law Tr. pa: 125.*
 Le roy ad grant al vn Venetian merchant, que il ſerroit quit De omnibus Custumis Subſidijs, & imposiſionib' & omnibus alijs denariorū ſummis debitib' & ſolubilibus pro quibuscumque merchandisis importandis, &c. & q' il ſerroit cy free come les citizengs de London. Per colour de c'eſt charter, il claiſme deſtre free de Prisage, pur ceo que per ſpeciall charter les citizengs de London ſont free de Prisage. Uncore fuit adiudge que c'eſt Grant del Roy ne diſcharge luy de Prisage, pur ceo que Prisage n'eſt ſpeciall expreſſe en meſme le grant. Et ſur meſme le reaſon fuit que resolute p' le dit chiefe Baron, & les auters Reſettes, ſur le charter de Drogheda, per que les Burghelles de c'eſt ville ſont diſcharge de Theoloneo, Paſtagio, Pannagio, Laſtagio, &c. que per force de c'eſt parol Laſtagio, ilz ne ſerront diſcharge de Graund Custoſe de 13. S. 4. d. payable pur cheſtun Last de Hydes pur ceo que il y ad vn Last de Herrings, et Last de Poboder, & de plusors auters choſes cybien que de Hydes.

Et ad arraignant fuit reſolute per le dit chiefe Baron & les auters, que vn ſuject ne poet preſcriber deſtre free & diſcharge

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discharge de le auntient custome payable pur marchandises, ou de receiuer ceo a son vse demesne, pur ceo que ceo est vn certaine reuenewo del corone, mes en auters choses que sont casuall, come waif, stray, wreck, vn subiect poet prescriber.

Et apres ceo, viz. 16. Decembris 6. Iacobi, le De chiefe Baron & les auters Referes returnont al Seigniorz del priuy counsell en Engleterre vn Certificat de lour opinion & resolution, ou, & en quel maner, les ditz auntient Customes & le Subsidie de Pondage doent estre pay et respond al Roy, en les seuerall port townes del Ireland. A quel Certificate, les Agents pur les ditz ports townes submittonnt eux mesmes, devant les ditz seigniorz del counsel, et agree-ont, que de horsenauant, les ditz Customes et Poudage serront pay accordant. Et sur ceo, cest Certificate fait tra-
mit en cest Realme, et enroll en le Eschequer icy, et accor-
dant a ceo, de puis cest temps, les ditz Customes et Pon-
dage ont estre respond, et pay al Roy, en tous les ports d'
Ireland.

Trinit

hitherto shal. That by law no man is obliged to take in payment other than money of gold & silver, goes
say, that there is not any example to the contrary, except this case; & after having stated it, he adds
this proceed. S is rejected by all y^e best lawyers as contrary to law; y^e privy council in Ireland
s no such legal power. And besides, it is to be considered, yt y^e queen was then under
t difficulties by a rebellion in that kingdom assisted from Spain; & whatever is done in
t raigences & dangerous times, shd never be an example to pro-**18**ced by, in seasons of
t quietnes. The queen's letters. Lett. 1st works. vol. 10. p. 38.



Trin^z. Iacobi.

Le Case de Mixt Moneys.

IA Roigne Elizabeth, pur paier les gages
del Army Royall que fuit maintaine en
cest Realme pur plusors ans, a suppre-
ser le rebellion de Tyrone, causant un
graund quantitie de Mixt moneys, otte
le usuall stampe del Arms de Corone, &
inscription de la roial stile, destre coine
in le Tower de London, & transmettre ceux monies en cest
Realme oue Proclamation portant dat 24. Maij, ansi 43. de
sa Raigne: per q^{ue} sa Maiestie declare et estableish ceux Mixt
moneys, immediatement apres le dit Proclamation fait,
destre le Royall & currant money de cest realme de Ireland, &
expresselint command que ceux monies sront issint bse, ac-
cept & repute, per tous ses subiects, et aufs, vllant aucun
traffique ou commerce deins cest realm: & que si aucun ylou
ou ylons refuseront de receiuer ceux Mixt monies, solonque
le Denomination ou valuation d'ceux, viz. shillings p shillings,
& les pieces de vi. d. p vi. d. & sic de ceteris, esteant tend p
paient des ascuns usages, fees, stipends, ou debts, &c. Ils
sront punis come contemniers de sa roial prerogative &
commandement. Et al entent q^{ue} ceux Mixt monies auoient
le meilleur course et passage, fuit ouster declare y mesme le
Proclamation, que apres l' 1^o. tour de lune prochein ensu-
ant tous aufs monies qui ont esté currat deins ce realm,
deuant le dit proclamation, sront decry & admiss, y esteeme
comme

Le Case de Mixt moneys.

come Bullion, et nemy come loyall & currant Money deins cest Realme.

En Aprial, devant que cest Proclamation fuyt publiss, quant le pure coine D'engleterre fuyt currant deins cest Realme, un Brett de Droghed marchant, ayant achate certaine wares d'un Gilbert en London devant obligé al dit Gilbert en obligation de 200. l. sur condition que il payera al dit Gilbert ses executoz, ou assigues, 100. l. sterling, currant & Loyall money D'engleterre, a le Tombe del Earle Strongbow in Christ church, Dublin, al certaine iour auener: quel iour hoppoit destre apres le dit proclamation, et estableissement del Standard de Mixt monies deins cest realm: p que, al dit iour et Lieu, Brett fist Tender del 100. l. en les Mixt monies del nouel Standard, en performance del condition del obligation auantdit. Et si cest Tender fuit suffisant d sauver le forfeiture del dit Obligation, & si le dit Brett oye sur le change ou alteration des Monies deins cest Realme, sera compell payer le dit 100. l. en auter ou meilleur coine, que en les Mixt monies, solonque le rate & valuation d eux al temps del Tender, fuit le question al Councell table, ou le dit Gilbert esteant Merchant de London ad exhibit petition vers le dit Brett pur le speedie recouerie de son debt auantdit.

Et pur ceo que cest fuit le generall Case del Realme, et fuit auxy de grand importance en consideration et reason d State, Mr George Cary esteant donhs Deputie et auxy Treasouret del Roy, requeroit les chiese Judges esteuant del Prince Councell de conferer & considerer de cest case, & de retourner a luy lour resolution touchant ceo. Queux sur conference et consideration en sur tous points del dit proclamation, fueront resolute, que le Tender del dit 100. l. en les Mixt monies, al iour, et lieu auantdit, fuyt bon et suffisant en la Ley de sauver le forfeiture del dit obligatio. Et que Brett ne sera enforce al aucun temps apres d payer auter Money en discharge de cest debt, forsque cest Mixt monie solonque le rate & valuation que ceo auoit al temps de Tender. Et cest resolution fuit certifie p eut a le Seignior Deputie, et le certificate enter en le councell Booke. Et en cest case divers points fueront consider, et resolute.

Pr

Le Case de Mixt monies.

19

Primierment fuit consider, q̄ en chescun commonwealth il besoigne dauer un certain Standard de moneys.

Car nul commonwealth poet estre sans contractz, et nul contractz sans equalitie, et nul equalitie en contractz sans mony. Car comt q̄ en les primer societies del mond, Permutation del un chose p̄ autre fuit bse, bnoze bñ tost ceo fait troue cumbersome, & le transportation et division des chosez fuit troue difficult & impossible : & p̄ ceo money fuit inuenient, cibien p̄ facilitie de commerce, q̄ p̄ reducer contractz al equalitie. Cum non facile concurrebar, vt cum tu haberetis quod ego desiderarem, ego inuicem haberem, quod tu accipere velles: electa materia est, cuius publica & perpetua estimatio difficultatibus permutationū subueniret. Paulus libr. 1. ff. de Contrahendis Empr. Et p̄ ceo mony est dit Per Bodin, mensura publica, & Budelius li. 1. de re Nūmaria ca. 3. dit, Moneta est iustum medium & mensura rerum commutabilium : nam p̄ medium monetæ fit omnium rerum, quæ in mundo sunt, conueniēs & iusta æstimatio. Et a celi entent Keble dit, 12. H. 7. fol. 23. b. q̄ chescun chose poet estre value p̄ Argent, p̄ q̄l parol Argent il entend mony coined. Et le graund utilite del un étain Standard des monies et des measures, est bien monstre p̄ Budelius en cest vers.

Vna Fides, Pondus, Mensura, Moneta sit vna,
Et status illæsus totius Orbis erit.

Secondement fuyt resolute, que appertient solement al Roy D'ngleterre, de faire ou coynier money deins ses dominions, issint que nul autre person poet ceo faire, sans speciall Licence ou commandement del Roy. Et si aultre presume de faire ceo de son Teste demesne, ceo est Treason enuers le person del Roy p̄ le common Ley. Et ceo appiert per le statute de 25. Edw. 3. cap. 2. que est forson declaration del common Ley, & p̄ Glanvil, Britton, & Bracton devant celi Statute, Stamford. fol. 2. & 3. ¶ en le case de Mines, Plow. Comment. fol. 316. a. cest point est expresse plus cleerement, ou est dit, que le Roy auera les Mines & Or & Argent : car si le subiect aueroit, si per la Ley, ne poet coigner tiels Mettallez, nemetter p̄ant, ne halue sur

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Le Case de Mixt money.

eux ; car appertient al Roy solement de metter value al coine, & faire le p̄ice del quantitie, & de metter p̄int a ceo : le quel esteant fait, le coine est currant , & si subiect ceo fait, ceo est grand Treason al common ley , come appiert , 23. Aſſ. p. 2. Et est grand Treason al Roy, p̄ ceo que il ad sole power de faire money, &c.

Et cest liure 3. choses sont expresse, queux sont requisite al fesans de loyall mony, viz. Authority del Prince, l p̄int & le value. Mes sur le consideration del case en question, fait note et obſerue, que 6. choses ou circumſtances doent concurre, p̄ faire Loyall & currant mony, 1. weight, 2. finenesse , 3. Impression , 4. Denomination, 5. Authoritie del Prince, 6. Proclamation. Car chescun piece de money doet auer un certaine proportion de weight ou poize, et un certaine proportion de puritie ou finenesse, que est appell Alloy. Auxx chescun piece doet auer un certaine forme del Impression que sera cognoscibilis & discernibilis car s'come cere nest Seale, sans p̄int, illint mettall nest money sans impression. Et Moneta dicitur a monendo, quia impressione nos moneat cuius sit moneta. Cuius imago & superscriptio est haec ? Cæſaris : date Cæſari que sunt Cæſaris. Auxx chescun piece de mony couient auer denomination ou valuation p̄ quant ceo sera accept ou pay, come per un penny, un groat, ou un shilling. Et tout ceo couient estre fait per authoritie & commaundement del Prince, car autrement le money nest Loiall, & doet estre publīsh p̄ proclamation del Prince, car devant ceo, le money nest currant.

Ceux circumſtances apearont en les auncient Ordinances fait per le Roy, pur le Coinage de money, cibien en cest Realme, que en Engleterre, queux sont destre troue en le Tower d London la, & en le castle d Dublin ley. Auxx les Indentures enter le Roy & les Maistres del Mint, prescrivent l proportion de poize, finenesse, & alloy, l impression ou inscription, le nomme à le value, vid. Stat. 2. H. 6. ca. 12. ou mention est fait de ceux Indentures, vid. auxx Wades case en le 5. part des Reports de le Seignior Coke, 114. b. q̄ le roy p̄ son proclamation poet faire aucun Coigne Loiall mony de Engleterre : a fortiori, il poet, per son proclamation tantum establish le Standard des monies coined per son authority detins ses proper dominions.

Le Cas de Mixt monies.

20

Et que le royst son prerogative poët auxy metter prizé ou valuation sur tous coines, appiert per un notable cas, 21. Edw. 3. fol. 60. b. En temps del William le Conquerer, le Abbe de Saint Edmunds Bury complainoit al royst en plaiment, que ou il fuit exempt del iurisdiction del Ordinarie per divers auntient charters, que le evesque de Norwiche ad visit son meason encounterer ceux charters d exemption. Per que fuit grant et ordinaire in Parliament, que si de cel temps en avant, le evesque de Norwiche ou aucun de ses successors allassent encounter le exemption auantdit, que ils payeront al royst, ou a ses heires, 30. Talentes ou Besautes. Apres ceo, viz. en temps Ed. 3. Le evesque de Norwiche visit la meason arrere, encounter le ordinance auantdit, & cest contempt estreant troue en Banke le royst, Scire facias tress vers Levesque a monstreter þ que si ne payeroit al royst les 30. Talentes ou Besautes. Et sur insufficient plea plead per Levesque, le court agard que le royst recouera les Talentes ou Besautes, et que la prise soit interpret þ le royst mesme, de quel prize ils seront plus ou moins. Per que est manifest que ou Talentes ou Besautes ou autres tiels pieces ou quantites d Or ou Argent, sont de uncertaine value (car Buddeus dit, quod Talenta sunt varia, & pondera sunt, potius quam numismata) le royst mesme ad power de mettre certaine value sur eux : solonque le rule bien conus al ciuilis Monetæ estimationem dat, qui cudendi potestatem habet. Et en cest point la common ley D'engleterre agree bien que les rules del ciuil ley, Ius cudenda Monetæ ad folū Principem, hoc est, Imperatorem de Iure pertinet. Monetandi Ius Principum osib[us] inhaeret. Ius monetæ comprehenditur in Regalibus, que[n]quam à Regio sceptro abdicantur.

Uncore per antient charters, cest privilege ou prerogative ad estre communicate al ascuns subiects en Engleterre : come al Archeneisque de Canterbury per charter del royst Athelstane. Lambert peramb. Kanc. fol. 291. Et Lancheinque de York, & evesque de Durham auoent minter, & power de coigner monies, come appiert p le Statute de 14. H. 8. cap. 12. et le Deane de Saint Martins le Grand ad mesme le privilege, come est manifest per le Statute de 17. Edw. 4. cap. 1. Et cest Ius cudenda monetæ ad estre geant al plusor, & graundes personages en France, en temps pa-

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Le Cas de Mixt moneys.

tauant, come Choppinus recite lib. de Domanio Franc. fol. 217. a. Et ce prerogative a cest iour, est impt tropé generallement al tousz inferiorz princez et states de Germany, per grant ou permission del Emperoz. Car cest vn ley del Empire, Ius cudenda moneta, nisi cui ab Imperatore concessum fuerit, nemo usurpato.

Tiercement fuit résolue, que s'icom le roy & son prærogative poët faire monies de ql matter & forme luy plera, & de establisher le standart de ceo. il s'int poët il changer son money en substance, & impression, & enhauuer, ou abaser le value de ceo, ou tout ousteroit decretz & adulterer ceo, il s'int que soit forisque Bullion, a son pleasure. Et nota que Bullion, que dicitur latine, Billio, est moneta defensa & prohibita, quæ videlicet, vsu caret.

Et que le Roy ad vse cest prerogative en Engleterre, appiert per plusoz notoriosz chaunges del Money, fait en temps del severall Roves depuis le Norman conquest An. 36. Hen. 2. Moneta veteri reprobata, noua successit. March. Paris. hist. mag. fol. 35. a. Anno 7. Iohannis nouel money fuit coigne, a quel temps le primer sterling money fuit fait solumque le opinion de Camden, ou il parle de sterling castle en Scotland fol. 700. b. An. 32. Hen. 3. le roy fuit enforce de faire nouel Money, cum moneta Anglia circumcidetur à circumcisio Iudeis, come March. Paris dit, fol. 703. a. Anno 7. Ed. 1. le standart del Monies fuit renewe, quant le sterling penny fuit establish de conteiner vicesimam partem vncæ, come appiert en veteri magna Charta, en le ordinance appell Compositio mensurarum, ou est ordene, quod viginti denarij faciant vnciam Anno. 29. Edw. 1. quaunt les moneys appell Pollardes fuerot dectie, nouel sterling mony fuit auxp coine, vide 6. Ed. 6. Dier 82. b. & lib. Rubro Scaccarij Dublin, part 2. fol. 1. b. Apres ceo nouel monies ont estee fait, 9. Ed. 3. & 13. H. 4. & 5. Ed. 4. & 19. H. 7. & 36. Hen. 8. Et dectaignement 2. Elizabeth, quant tousz mixt et base Monies fueront dectie, & le standard de pure siluer establish, que continue a cest iour, de que Bodin fait honorable mention libr 6. de Republica cap. 3.

Et semble, ceut changer de Monies en Angleterre furent fait per le authoirtie del roy sans Parliamen:, come que

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que plusor's acts de Parliament ont este fait, p ordering del eschange, & a prohibiter le exportation des Monies factes & ordaines p le roy, & le importation & utterance de foreine & faux monies, sur certaine paines & penalties, dont ascuns fueront capitall, & ascuns pecuniary. Et plusor's ordinance's del roy fait sans Parliament, sont appell statutes, come Statutum de moneta magnum, & statutum de moneta parvum, q sont issint nosme statutes, p ceo, que le ordinance del roy oue proclamation en tel case, ad le force del act de Parliament.

Et s'come le Roy ad vse de Chaunger le standard de ses monies, cesta scauoir le forme & le substance, issint ad il vse per so prerogative de enhanser ou abaser le valuation de ceo, nient obstant que le forme, & substance continue come il fuit deuant. Et ceo fuit fait, 5. Ed. 4. come appiert p le litter de 9. Ed. 4. fol. 49. i. qu Danby dit, que vn noble est meilleur ore que il fuit Anno 20. de cest roy, 20. b. en chescu noble : & le roy 18. p special commission Dat. 24. Julij, anf 18. de son raigne, authorise le Cardinall Wolsey oue le adutte des auters del Counsell del Roy, de matter valuation sur touts monies de Engleterre, de temps en temps, solonque les rates & values del monies de foreine nations, qux fueront adonques trop en, hances, specialitat p le Emperor, et le roy de France, coe est expresse en le dit commission. Vide auxy 6. & 7. Ed. 6. Dier 82. & 83. divers cases sur imbassement des Monies.

Et est destre noate que ent le an, 36. H. 8. quant plusors sortes de base monies fuerot coigne en Engleterre, & 2. Eliz. quant le pure standard des siluer monies fuit estableish, il y ad 3. notorious falles ou decries de base monies publish p proclamation : le primer, 9. Julij 5. Ed. 6. le second 17. Augusti codem anno, come est expresse en Dier 83. a. le tierce, 28. September. 2. Eliz.

Et s'come le Roy ad touts foits vse de faire & chaunger les monies de Engleterre, il ad auxy vse mesme le prerogative en Ireland touts temps depuis le 12. an del Roy Iohn, quat le primer standard des English monies fuit estableish en cest Realme : come est record Per Mart. Paris. magna hist. fol. 220. b. ou il dit, que cest Roy esteant in Ireland

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constituit ibidē leges & cōsuetudines Anglicanas, ponens ibidē Vicecomites, aliosque ministros, qui populū regni illius iuxta leges Anglicanas iudicarent. Præfecit autem ibidem Iohānū de Gray Episcopū Norwicensem Iustitiarium, qui denarium terræ illius ad pondus numismatis Angliae fecerat publicari, & tam obulū quā quadrantem rotundū fieri præcepit: iussit quo que Rex, ut illius monetæ vslus rā in Anglia quam in Hibernia communis ab omnibus haberetur, & vtriusque regni denarius in thesauris suis indifferenter poneretur.

Per que appiert, que le Standard de monies en Engleterre & en Ireland fuit equall al p̄imes, & que le English money ne fuit vn quart part melior in value que le Irish, come ceo ad estre depuis le temps del Edw. 4. Car deuant, sicome fuit vn mesme Standard de moneys en ambideux Realmes, issint touts foits quant le money fuit chaunge en Engleterre, fuit auxy change in Ireland cōe en le an 1279. viz. 7. Edw. 1. quant & dw. 1. establish nouvel mony en Engleterre, come deuant est monstre, fuit auxy mutation des moneys en Ireland, come est noate en les Annals de cest Realme, publish per Camden en son liuer de Britannia, ou est dit, que Anno 1279. Dominus Robertus de Vfford iustitiari⁹ Hyberniae intravit Angliā, & constituit loco fratrem Robert⁹ de Fulbourne Episcopum Waterford, cuius tempore mutata est moneta. Issint 29. Edw. 1. quant per speciall ordinance del Roy les Pollards & Crockards fues decrie & adnull, mesme le ordinance fuit transmitt en cest Realme, & enroll en le eschecquer icy, come est troue in libro Rubro Scaccarij hic part. 2. fol. 2. b. auxy en les Annals abantdit, est note en mesme le an, Numisma Pollardarum prohibetur in Anglia & Hybernia.

Et sicome le Standard des monys fuit equall, issint les mints & coñage en eest realme fuit op̄der & gouverne en mesme le manner come en Engleterre, come appiert y le accompt del Donat & Andrew de Sperdholt maistres del eschange at Dublin, 9. & 10. E. 1. in Archiuis Castri Dublin, & in libro Rubro Scaccarij hic part 2. fol. 1. & en Ror. Parliament. in Castri Dublin, 12. Edw. 4. cap. 60. vide auxy plusors ordinances la touchant le mint & moneys, 7. E. 4. c. 9. 10. Ed. 4. c. 4. 16. E. 4. c. 2. 19. E. 4. c. 1. 1. R. 3. c. 7.

Mes

Pes le primer difference et inéqualité entre les stan-
dardes del english Monies, et Irish Monies, est troue en 5.
Edw. 4. Car donques fut declaré en Parliament icy, que
le Noble fait en temps Edw. 4. Hen. 4. Hen. 5. & H. 6.
ferroit de cest temps en autant d'aurant en cest Realme, pur
x.s. & issint le demy Noble, & tousz autres coins soloncqz
mesme le rate vide Rot. Parliament, 5. Edw. 4. cap. 40. & 11.
Edw. 4. cap. 6. & 15. Edw. 4. cap. 5. in le office del Rollis in
Castro Dublin. Apres quel temps, le Money fait in Irelad,
ou p Ireland, fuit tousz soits meinder in valuation que le
Money de engleterre, & le bſuall proportion del difference
fuit le quart part tantum, viz. le Irish shilling fuit foſſque
9.0. del engleterre vide le Proclamation auantdit, dat. 24.
Maij 43. Eliz. enrol en le Chauncery icy, ou la Roigne fait
mention de cest difference fait per les progenitors enter le
Standard des moneyes fait pur cest Realme, & les monies
D'engleterre. Et nota que ceo que est appell Standard del
money en cest casse, est mesme ceo que est appell p le French
Pied de money, p Bodin, Pes monetarum, quasi Princeps ibi
pedem figat aiant fix & establish le poig & purit y del Money
en un certaine proportion, que ne sera transgresse per les
Moniers.

Et issint est manifest, que les Royes de engleterre ont
toutfoits ew & exercice cest prerogative d'coiner, & changer
le forme, & quant ils trouant expedient, de enhancer & aba-
ſer le value de monies, deins leur dominions. Et cest prerog-
ative est allow & approue non soleint p le common ley, mes-
auxy p les rules del Imperiall Ley. Budelius de re num-
aria libr. 1. cap. 5. Princeps ad arbitrium suū, irrequisito assen-
ſu subditorum, valorem monetæ constituere potest, quia popu-
lus, quantū ad hoc, omnem potestatē & iurisdictionem in Prin-
cipem seu Imperatorem tranſtulisse dicitur. Et paula post en
mesme le charter, comment que astuns, DD. sont de opinion,
Principem sine assensu populi monetam mutare non posse, hinc
tote il conclude. Si Princeps consueisset mutare monetā au-
toritate propria, sine consensu populi, a tempore, cuius initij me-
moria non existit, tunc libere imposterū eum hoc facere posse.
L. hoc Iure paraḡ ductus aquæ ff. de aqua quotidian. &c. Et
Cœurruias lib̄ de collatione veterū numismatū, cap. de mu-
tatione

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tatione monetæ dñs, Princeps potest mutare monetam ratione publicæ utilitatis, viz. tempore belli, vel si alias utile populo sit futurum, ita etiam, ut ex Corio fieri possit. Et p̄ ceo est note per Molineum libro de mutatione Monetæ cap. 100. que le state de Rome in le primer Punik guerre, quant Anniball ad possele grand part de Italy, & tout lour treasoure fuit exhaust, enhansoit base monies al grand values, pur payement de lour Armies, & vncore le Justice de cest state fuit donques famoues per tout le mond. Mes nihil est magis iustum quam quod necessarium, per que appiert, que les mixt monies fueront fait per la roigne Elizab. sur iust & honora-ble cause.

Fuit resolute, que le dit Mixt money ayant le impression & le inscription de la roigne de Engletere, & esteant pro-claine pur loyall et currant money deins cest realme de Ireland, doet estre prise & accept p̄ Sterling money : & sur consideration d̄ ce point, le nosme & le nature de sterling mony fuit enquier & discouer. Pur le nosme de sterling, ascuns Doctorz de la Ley cituile esteant deceut p̄ le erron-ous report del Polidor, Virgil, ont conceue, que cest Eng-lish money fuit appell sterling, p̄ ceo que le forme dun stare, dor le diminutiu e sterling fuit impreint ou stamp sur c̄. Et p̄ e Couarruuias lib. de Collatione veterum numismatum c. 2. Sterling (dit il) est argenteus nummus Anglicus ex vicefima sexta parte vncie, nam viginti sex nummi argenti sterlindi, pen-debant vnciam. Autore Polidoro Virgilio in historia Anglica, lib. 16. Dictus autē est hic nummus, vt idem author tradit, ster-ling, quod Sturnus avis, Anglicè, sterling, in altera parte num-mi eslet impressa. A mesme le entent Choppinus de domanio Franc. lib. 2. tit' 7. ad cest noate. Cæterum Errico 3. Britan-niæ Rege, primū percussa est nunc visitatissima sterlindorū mo-neta, ab effigie sturni sic dicta, anno 1249. **Ceux** DD. esteant alieni, fueront come semble, misinforme p̄ Polidor Virg. II. que fuit auxy un Alien, & hospes in nostra Respubli-ca : mes nostre Linwood auxy (que fesoit son glosse sur l'g Provincial constitutiōs de Engletere, en temps H. 6.) titul de Testamentis C. item quia, verbo, Centum solidos, dit, que sterlindorū nomē erat argenteæ monetæ, & habebat similitudi-nem

nem denarij visualis, hoc saluo, quod in vna quarta habebat effigiem avis, quæ vocatur Sturnus, Anglices sterlinc.

Autres ont estre de opinion, que cest english money a boit le nomme de sterlinc, pur ceo que le premier money de cest Standard fuit coigne in le castle de sterlinc in Scotland per le Roy Edw. 1. Mes ceo est auxy erronious opinion, come est noate per Camden in Scotia pag. 700. ou il parlant del castle de sterlinc dit, Quod quidam monetæ probam Anglia, quæ sterlinc money, dicitur, hinc denominatam volunt, fru stra sunt, a Germanis enim, quos Angli Esterlinges ab Orientali situ vocarunt, facta est appellatio, quos Iohannes Rex ad argentum in suam puritatem redigendum, primus euocauit, & eiusmodi nummi, Esterlingi, in antiquis scripturis semper reperiuntur.

Et cest detraigne opinion, sans doubt, est le meilleur et plus probable, per le Judgment de tous les bien doces Antiquaries D'engleterre. Car en tous les auctiue statutes, queux sesont mention de cest money, ceo cest appelle Esterling. Come 9. Ed. 3.ca.2.&c. Nul faux mony eounterfeate Esterling ne soit emport en nostre Realme. Et eodem Anno cap. 3. Nul Esterling maile, ne ferlinge, soit found pur vessell,&c. Et 25. Edw. 3. cap. 13. que le money de Or & Argent que ore court, ne soit pas empaire en pois ne en Alloy, mes soit mise en lantient estate come en le esterling. Et Mart. Paris. Magn. hystor. fol. 403. ou il expresse le forme del obligation per le Clergie del Angleterre fait al Bankers del Pape resident en London, fait mention de cest money per nomen esterlingorum : noueritis nos recipisse ab A. & B. &c. centum vncias bonorum & legalium esterlingorum, tresdecim solidis & quatuor sterlings pro qualibet vncia computatis et en mesme le Autoz fol. 710. eodem tempore, dicitur, Moneta esterlingorum propter sui materiam desiderabilem, detectabili circumcisione coepit deteriorari & corrupti & fol. 575. Comitissa de Biarde venit ad Regem cum 60. militibus, ducta cupidine esterlingorum, quibus nouerat Regem Anglia abundare, & accepit a Rege qualibet die p stipendio tresdecim libras esterlingorum,&c. Et Houenden in Richard. 1. f. 377. b. fait mention de cest money en centz patols, Videns igitur Galfridus Eboracensis electus, quod nisi mediante pecunia amore regis fratris sui nullaten' habere possit, promisit ei tria milia libratuum

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brarum sterlingorum pro amore eius habendo : & ceo fuit devant le temps del roy John, p que semble, que le temps qnt cest money fuit primitivement coigne est incertaine. Car alcuns diont, que fuit fait p Osbright vn roy de Saxon race 160 ans devant le Norman Conquest. Et issint, Sieut nummus dicitur à Numa q fuit le premier roy que fesoit monies en Rome, issint sterling dicitur ab Esterlings, qux primes fesoient le money de cest Standard en Engleterre, per Metonymiam , cum inuentorem pro re inuenta ponimus, vt Ceres pro frumento, Bacchus pro vino, &c.

Et est destre obserue, que les Esterlings fueront les primer founders de les 4. principall cities del Ireland , viz. Dublin, Waterford, Corke, & Limrick, & del autres maritime villes en cest Realme, et fueront le sole maintainours de traffique et commerce, que fuit tout ousterent neglect p les Irish. Ceux cities et villes fueront desouth le protection del roy Edgar, & Edw. le Confessor devant le Norman conquest. Et cens Esterlings en les antient records de cest realme sont appell Ostmanni. Et p ceo , quant H. 2. sur le premier conquest , pensoit mieux de peopler ceas cities & villes que English colonies deduce de Bristol, & Chester, &c. il assignoit al ceux Ostmen certaine proportion de terre procheine adioynant al chescun des dits cities, quel portion est appell en les Records de auntient temps , Cantreda Ostmannorum. Et tout ceo fuit obserue sur le nosme de Sterling.

Pur le nature ou substance de cest money , primitivement fuit note , que le coigne que fuit proprement appell le Sterling, fuit le denier ou penny de siluer, come appiert en le Ordinance appell Compositio mensurarum fait en temps Edw. 1. ou ell dit, quod denarius Angliae, qui nominatur Sterlingus, rotundus, sine tonsura, ponderabit triginta & duo grana in medio spica, &c. Et chescun autre coigne ou piece de siluer fuit measure per le sterling penny, come le groate contineoit le value de 4. sterlings, & le halfe groate le value de 2. sterlings, 25. Edward. 3. cap. 6. et le shilling consistoit de 12. sterlings, Linwood de testamentis C. Item quia, verb. Cetum solidos. Et le Marche consistoit de 13. solidis & quatuor sterlings, come devant est monstre, Matth. Paris. hist. magn. pag. 710. & le maille fuit noate p cest parol demi, viz. Demie dia

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dia pars sterlingi, & le farthing p qua, viz. quarta pars sterlingi.
vid. vn Ordinance sang date in magna Charta imprime per
Totell Anno. 1556. fol. 167. & en le vieux abridgement de
Rastall, mony 52. Quia multorum Regum temporibus prouis-
sum fuit, & propter pauperes denarius argenti, viz. Sterlingus
divideretur in obulum & quadrantem, ex parte domini Regis
precipitur, quod quicunque recusauerit obulum vel quadran-
tem debitam habentem formam, capiatur, &c. Vid. 6. & 7. Ed.
6. Dier. en le case de Pollardes, ou appiert que sterlingus &
denarius sont tout vn, car la est dit quod duo Pollardi cur-
rebant pro vno sterlingo, & accordant duo sterlingi fueront
pay pro uno denario. Et reuera en auncient temps, chescun
soiz de mony, fait de les seuerall mettals dont mony fuit
visualment coigne, fuit proprement denarius : & pur ceo les
French & Italiens parlent proprement, ou ils appellont
touts monies deniers, & danari, car nummi fueront vel cuprei
vel argentei, vel aurei : singuli argentei valebant decem cu-
preos, & sic denarij sunt appellati, & singuli aurei valebant
decem argenteos, & en cest respect ceux fueront aux denarij,
& le auncient proportion del Or al Argent fuit 10. al 1.
Et cest proportion (come semble) Dauid ad obserue en le
treasure de Or & Argent que il ad prepare pur le erection
del Temple : car le Text dit, Chron. cap. 22. vers. 14. que il
ad prouide a cest purpose cent mill talents de Or, & dix
cent mil talents de Argent. Illint le prumer & proper ster-
ling coine fuit denarius.

Et pur le substance de cest denier ou sterling penie in
pondere & puritate. Quant al poig ceo fuit al prumes vi-
cessima pars vnciae, viz. vn ounce fuit tallie en 20. Sterling
deniers, & ment plus, vid. compositio mensurarum fait en
temp Edw. 1. in veteri libri de Magna Charta fol. 113. b. Et
en le vieux Abridgement de Rastall, Tit. Weights & Mea-
sures, 4. ou est dit, Quod viginti denarij faciant vnciam, &
duodecim vnciae faciunt libram. Et illint le Sterling penie
fuit le huit part del ounce tanque. 9. Edw. 3. a quel temps le
ounce del siluer fuit tallie en 26. pence, Annales del Rob. de
Avesbury M.S. vid. plusoz ordinauncez touchant le nouvel
Sterling money fait 9. Edw. 3. Rastall, Mony, 345. Et tel p-
portion fuit continue tanque, 2. Henr. 6. quant le ounce del
siluer fesoit, 32. pence, & ceo appiert per le statute de 2. H.
6. cap.

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6.cap. 13. Et aux p Linwood de Testamentis cap. Item quia.
verb. centum solidos, hic solidus (dit il) sumitur pro duode-
cim denarijs Anglicanis : horum viginti sex pondera-
bant vnciam, cum tamen iam 32 denarij vix faciant vnciam.
Et cest glosse fuit escripte en commencement del raigne del
Hen. 6. come il mesme expresse en le Preface a son liuer: cest
standard fuit continue iusques al 5. Edw. 4. & donques le
ounce del siluer fesoit 40. pence : 9. Edw. 4. 49. a. & 12. Ed. 4.
cap. 60. in Rot. Parliament. Dublin, & ceo continuoit iusques
al 36. Henr. 8. quant le Roy preperoit son journey al Bul-
logne, & donques un ounce de siluer fuit diuide en 45. pêce,
que ne fuit alter iusques al 2. Elizabeth, quaunt le ounce de
pure siluer fuet tallie en 60. pence, et cest Standard remain-
a cest iour : & issint le sterling peny que fuit al primis vic-
sim pars vnciae, est ore sexagesima pars vnciae, et p conse-
quence le antient sterling penny containoit tant de siluer,
quant est contain en le piece h trois deniers q est currant a
cest iour.

Et quant al purite de cest sterling money, 18.s. 5.d. ob.
argenti purissimi continebatur in qualibet libra, & qualibet li-
bra de sterling mony auoit 18.d. ob. & allay de copper, & nient
plus. & de cest allay de sterling mony les ordonances ou
statuts d 25. E. 3. ca. 13. & 2. H. 6. ca. 13. font mention. Mes
ceo est bien conus al toutz Moniers, & est conteine en toutz
les Indentures fait enter le Roy, & les Maistres del
Minte.

Donques, le sterling mony esteant de tel pois, et de tel
finenes, le Doubte, prima facie, fuit, comment cest Mixt Money
sera dit Sterling. Et pur le cleering de cest Doubt, fuit dit,
que en chescan come un piece de money est bonitas intrin-
seca, & bonitas extrinseca : Intrinseca consistit in præciositate
materia & pondere, viz. fineness & weight : Extrinseca boni-
tas consistit in valuatione seu denominatione, & in forma seu
charectere. Budelius de re Nummaria lib. 1. cap. 7. Et cest bo-
nitas extrinseca que est aux p d' estimatio siue valor impositi-
tius est formalis & essentialis bonitas monetæ et cest forme
dat nomen & esse a le money, car sans tel forme le plus
precious & pure metall que poet estre, nest pas money. Et
pur ceo Molineus libro de mutatione Monetæ dit, non mate-
ria naturalis corporis monetæ, sed valor imposititius est for-
ma

ma & substantia monetæ, quæ non est corpus Physicum sed artificiale come Aristotle dit Ethycorum lib. 5. Et auxi Politicorum primo, il dit a cest effect, que mony fuit primerment signe & imprint oue certeine charecter, al intent, que le people acceptera ceo, sur credit del Prince ou state que publish ceo, sans examination ou trial del Pois ou Purity. Et a cest entent Molineus ad cest rule Q. 99. De Iure non refert, sive plus, sive minus argenti insit, modo publica, proba, & legitima moneta sit. Et Baldus l. singulari, dit, in pecunia potius attenditur vsus & cursus quam materia. Et Seneca lib. 3. de beneficijs, æs alienum habere dicitur, & qui aureos deber, & qui corium forma publica percussum. Et fuit dit q̄ le Roy ad mesme le prerogatiue a doner balewe al base metrall per son impression ou Charecter, come il ad a doner estimation al vn meane person per imparting le Charecter del honoz a lui: Sic fiet viro quem Rex honorare desiderat. Et issint fuit conclude, que apres que les Esterlings p commaundement del Roy del Engleterre, ont fait cest pure English money, que à nomine opifcum fuit appell Sterling, ou Sterling Money (le Standard de quel Money adestre tous foits le plus fift & vnmoueable Standard de Money en tout le Mounde, que ad estre grand honoz al nostre Nation, car en tous auls Realms & States, les Standards de lour Monies sont plus unstetts & variable) Tous Monies coigne p l' authoritie del Roy D'engleterre, & ayant son characeer et impression non solemet en Engleterre, mes auxy en Scotland & Ireland ont estre Sterling monies, & issint appell, reputé, et accept p tous gentz, soit le matter d' ceo mixt ou pur. Et ceo appiert p l' Ordinance que est appell Statutum de moneta magnum, p quel tous monies sont prohibite forsque l' monie del Engleterre, de Ireland, & de Escosse, que fuit pperment le Sterling money. Et p ceo Freherus, libro de renummaria, vbi immumerat varias variarum gentium monetas: Sterlingi, inquit, habentur in Anglia, Scotia, & Hybernia. Et Bodin.lib. 6. de Republica, ca. 3. plant Del mony d Scotland, en Escosse, dit il, sont deuy liures fort differentes, l' un de Esterlings, l' autre usagere. Et certes le vblal Scotish liuer est semblable al French liuer, & le liures de Esterlings euant la, est celle D'engleterre. Et que base du Mysl'money

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ney poit estre currant p Sterling, appiert p le dit case de Pollards, Dyer 82.b. ou est dit, Quod curebat quædam moneta in Anglia loco sterlingi que vocabatur Pollardes, scz. duo Pollardi p vno sterlingo.

Dy. 24. 67. 1m

5 **F**uit resolute que coment que cest mixt mony fuit fait destre currant deins cest Realme de Ireland solement, vncoere ceo poet estre bien dit, currant et lopall money D'engleterre, p 2. causes, 1. p ceo que cest Realme est forisque member del Imperial Cozone D'engleterre, & ceo appiert, 3. Henric. 7. fol. 10. a. ou question fuit propound a les Justices p Hobart Attorney generall. Si quis sciens monetam ad similitudinem monetæ Regis Angliae contrafactam, talem monetam in Angliam extra Hyberniam deferat, si sit proditio necne : & dixerunt quod Hybernia est quasi Membrum Angliae, & ibidem legibus Angl' vratur, & autoritate Regia faciunt Monetam. Et a cest intent est recite en le Statute de Faculties, enact en cest Realm, 28. Henr. 8. cap. 19. That this the Kings Land of Ireland is a Member appendant, and rightfully belonging to the Imperial Crown of the Realme of England, and vnted vnto the same. Et en l' Act v 33. H. 8. cap. 1. p que le stile & title del Roy de Ireland fuit done al Henr. 8. seg heire & successors, est oultre enact que le Roy enjoyera cest stile & title, et tous s autres Royall preheminences, prerogatiues, & dignities, As vnted and annexed to the Imperiall Crown of the realme of England.

2 Est appell Loyall Money D'engleterre, en respect del lieu de Coinage, que fuit en Engleterre, viz. en l' Tower de London. Car coment que en antient temps l' Roy auoit plusors Mints en cest Realme, s' come il auoit en Engleterre, vncoere depuis le commencement del raigne de la Roigne Elizabeth, tous les Mints ont estre reduc al un lieu, viz. al Tower de London. Et ceo fuit fait sur bone reason de state, p auoyder falsification des Monies. Et p ceo, deuaunt le Norman Conquest, tous monies furent coigne en Monasteries: car fuit presume que in tielz meassong nul falsifie ou corruption ferroit troue : et ceo agree ou le prudence del Romaine state, que nauoit forse que un Mint pur tout Italy : Et ceo fuit en le Temple de

De Iuno al Rome, que pur cest cause fuit appell Junomone-
ta : & a celi entent le Empereur Charle-Maistre fesoit vn ley
en ceulz parolz, viz. De talsis monetis, quia in diuersis locis
contra Iustitiā fiunt, volumus, vt in nullo alio loco moneta, nisi
in Palatio nostro, fiat. Choppinus de Domanio Francie, fol.
217.a. vnoore en 28.Ed. 1. cest prudent Roy pur le facilitie
de eschaunge, causast plusors Mints destre establish en se-
uerail villes de Engleterre : vn en le Tower de London
oue 30.furnasses, auter al Canterbury oue 8. furnasses, au-
ter al Kingstone super Hul oue 4. furnasses, auter al New-
castle & Tine, oue 2. furnasses, auter al Bristol, oue 4, fur-
nasses, & auter al Exeter oue 2. furnasses. Tractat. de mo-
neta Angliae fait en temps Edw. 1. que ieo trouve en le Li-
brarie de sir Robert Cotton, que fuit le liuer de sir Burleigh
iadic Grand Treasurer d'Engleterre, vide auxy les Clo-
rolls, 29.Ed. 1. in Turre London : & ceo appiert auxy p le in-
scription de diuers antient coines, sur queux sont expresse
les nomes des cities ou furent coined, accordant al verse
fait en temps Ed. 1. & prise p Stow hors de Robert le Brun
vn antient M. S.

Edward did smite round penny, halfpenny, farthing.

& donques ensuit.

On the Kings side, was his head and his name written,
On the Crosse side the Citie where it was smitten.

Et mesme celi Roy ayant establish vn Mint al Dublin
oue 4. furnasses, et ayant constitue Alexander Norman
de Lusk master des moniegla, come appiert en plusors re-
cordis in Archiuis Castri Dublini, apres, viz. 32.Ed. 1. quant
il auoit alter le forme del coigne, il causast diuers stampes
consistant de 2. partz, dont le vn contenoit le Pile, & le au-
ter le Crosse, destre transmis al Treasurer de celi Realme,
come est record in libro Rubro Scacca hic, en celi manner
Magister Gulielmus de Wimundham custos Cambiorum
domini Regis in Ang', de præcepto venerabilis Patris Bathon.
& Wellensis Episcopi, Thesaurarij eiusdem domini Regis, misit
domino Gulielmo de Esenden thesaurario in Hibernia, viginti
quatuor pecias cuneorum, Pro moneta ibidem facienda, bzy,

Le Case de Mixt monies.

tres pilas cum sex crucellis pro denarijs, tres pilas cum sex crucellis pro obolis, & duas pilas cum quatuor crucellis p ferlingis, per Iohannem le minor, Thomas Dowle, & Iohannem de Sherdich clericos de societate operariorum & monetariorum London, per eosdem ad monetam prædictam operandam & monetandam, & la ē auxy expresse entry fait deuant queux tesmoignes les dits stamps fueront deliuer. Car Cuncus moneta tanquam sigillum regni custodiri debeat, come est dit en le treatise de moneta Anglia, fait en le temps Ed. 1. mention deuant : & le reason est, p ceo que de counterfeater luns & lauter est hault treason.

Et a cest temps fuit forisque vn Minte in Ireland, cest a scauoire al Dublin : mes longe temps apres, viz. 3. E. 4. vn Mint fuit establish al Waterford, & auter al Trim, & au-
ter al Gallway, Rot Parliament. 3. E. 4. in Castro Dublin. Et
12. Ed. 4. Rot. Parliament. ibidem, est ordeine que les mai-
sters de Minte en Ireland faieront en les Castles de Du-
blin, et Trim et en le ville de Drogheada, cinqe sortes de
coines, le Groate, le halffroate, le penny, halfpenny, far-
thing, per que est manifest que en temps parauant, ount
estre 5. seuerall Mintes in Ireland en les seuerall villes
auant dit. Mes tous ceux fueront discontinue en temps
Edw. 6. issint que depuis le raigne de cest Roy tous les
monies faits pur Ireland, ont estre coigne en Engleterre,
et pur ceo cest Mixt Money coyned en le Tower de Lon-
don poet estre dit proprement currant & loyall mony D'en-
gleterre.

DErraignement fuit resolute, que coment que al temps
del cōtract & obligatiō fait en le case auant dit, pur
money d'Or & Argent fuit currant deing cest realme,
ou le lieue de payment fuit assigne, vnoz le Mixt Money
esteaunt establish en cest Realme deuant le iour de pay-
ment, poet estre bien tender en discharge del dit obliga-
tion, & le obligee est lie de accepter ceo : et sil ceo refuse, et
targe tant que le money soit chaunge arrere, le obligoz nest
tenus de payer auter money de meilleur substance, mes
suffit si soit tous temps pris de paper les Mixt Moneyes
solonque le rate, pur que ceux fueront currant al temps
del tender. Et cest point fuit resolute, sur consideration de

Le Case de Mixt monies.

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2. Circumstances, viz. le temps & le lieu de payment. Car le temps est future, That if the said Brett shall pay or cause to be paid one hundred pounds sterling currant mony, &c. Et p^r ceo tiel money sera pay que sera currant a tiel future temps, tisint que le temps del payment, & nemy le temps del contract sera respect.

Auxy le future temps est entend per les parols currant Money, car chose que est passe nest in cursu. Et pur ceo tout les Doctorz queux escriptant de re Nummaria agreeont en cest rule, Verba currentis monetar tempus solutionis designant. Et a cest entent sont plusors cases ruled in nostre lieut^s 6. & 7. Edw. 6. Dier 8 i. b. Apres le fail & embalement des monies, 5. Ed. 6. Debt fuit poxt vers executoz de lessie pur ans, p^r rent accere pur 2, ang finie al Mich. 2. Ed. 6. a quel temps le shilling, que al temps del action poxt, fuit decrie al viij. d. fuit currant pur xij. d. en cest case les defendantz pleadont Tender del rent al iours quat ceo fuit due, in pecijs monetar Anglia vocat. shillings & que chescun shilling al temps del Tender fuit solubilis p^r xij. d. Mes le plaintiff ne nul autre pur lui fuet pris de receuoir ceo, &c. Et concludont, que ils sont vnocez pris de payer les arrages in dictis pecijs vocat. shillings secundam ratam, &c. Sur cest plea coment que le plaintiff demurroit, vnocez il fuyt content de prendre le Argent secundam ratam prædictam, sans costz ou damages. A mesme le entent est le case de Pollardes adiudice, 29. Ed. 1. & Report p^r Dier 7. Ed. 6. fol. 82. b. ou en debt sur obligation pur payment de 24. l. al 2. several iours, le defendant plead que al iours limit pur payment de debt en demaund, currebat quædam moneta quæ vocabatur Pollardes loco sterlنجi, &c. Et que le defendant al primum iour de payment ad Tender le moitie del debt en le money appell Pollardes, q^u le plaintiff refuse, & q^u il est vnocez pris, &c. Et offrir ceo in court, que nest deny per le plaintiff, ideo concessum est que il recouer un moietie en Pollardes & le au- ter in pure sterling money, vide 9. Edw. 4. 49. 2. Un notable case sur chaunge de Monies, ou est dit que si home en ac- tion de debt demaund, 40. l. sera entend money que curze al temps de briue purchase. Et la un case de temps, Ed. 1. est mis, que est direct a cest purpose. En debt poxt sur fait,

C 3

de

Le Case de Mixt moneys.

De 30. quarters de orge, price, 20.l. fuit troue pur le plaintif, & le Jury fuit charge de enquire del price al temps du payment, & fuit dit, que al temps del payment vn quartier fuit al 32.s. Mes al temps de fesans de fait fuit foysque al 3.s. & le plaintif recouer 18.l. pur le blee, accordant al price que fuit al temps del payment. Auty a cest entent Linwood ad vn notable glosse sur le constitution de Simon Mepham libr. 3. de Testamentis, cap. Item quia. Car, ou le constitution est tiel, Pro publicatione testamenti pauperis, cuius inuentarium bonorum non excedit centum solidos sterlingorum, nihil penitus exigatur, il fait cest glosse: hic solidus sumitur pro duodecim denarijs Anglicanis, &c. Sed quero, inquit, ille, nunquid circa hos centū solidos debeat considerari valor in moneta iam currente, vel valor sterlinoꝝ qui currebant tempore statuti & la il resolute, quod vbi dispositio surgit ex statuto, vt hic, licet moneta sit diminuta in valore, tamen debet considerari respectu monetarū nouē currentis, & non respectu antiquarū. Nam mutata moneta, mutari vider' statutū, vt scilicet intellegatur de noua, & non de veteri, vide Registrū fol. 50.a. & 54.b. ou le toy maunde so brieve destre certifie del value del esglise, les parolz del brieve sont Secundum taxationem decimā iam currentis. Et 31.Ed.3. fitz Annuitie 28. Annuitie fuit grant al I.S. tantque il fuit promote per le grantor al sufficient benefice I.S. port brieve de annuity vers le grantor, que plead que il ad Tender al plaintif sufficient benefice, & la issue est pris le value del benefice al temps del Tender.

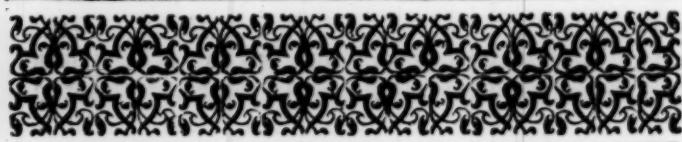
Mes fuit dit, que comment que en contracts ceux parolz currentis monetarū, serront referre al temps del payment, vnoꝝ en daretin boluntz serront referre al temps conditi Testamentari, car le bequeast est en le present temps, Item I giue and bequeath, &c. Et pur ceo legacies serront pay en tiel money que fuit currant al temps del fesans del Testament, ou solonque le rate de ceo. Fuit auty dit, que si hom ad 1000.l. pure siluer en Marriage oue sa femme, & apres ils soient divorce causa præcontractus, per que la femme receuera la portion, ou si home recouer p erroneous Judgement 100.l. en debt, & ad execution en pure siluer money, & apres le Judgement est reuers, issint que

il sera restore a tout ceo que il ad perdu, comest que base money soit estable en le meane temps, restitution sera en tel money que fuit currant ad temps del Marriage, & al temps del recouerie. Mes ceus derraine cases ne fueront resolute.

Et p le circumstance de lieu, fuit resolute, que comest que le contract fuit fait en London, bnc le lieu de painment esteant appoint in Dublin, il couient de necessitie que le obligor ferroit son tender en le Mixt money al temps de painment. Car tout autre money fuit & decrie fait bullion per le proclamation auant dit, & cest money solement establish: issint que si le obligee ad refuse cest Mixt money, il ad comit contempt pur que il serroit punish. Auxy les Judges de la ley ne sot tenus de prendre notice del aucun money que nest currant per Proclamation. Et p ceo, Prisott dit 34.H. 6. fol. 12.a. nous ne somus appysse de 6.l. Flemish, come somus de cent Nobles. Et p ceo en tous contracts de Marchants, Consuetudo & statuta loci in quem est destinata solutio, respicienda sunt, Budelius de re Nummaria libr. 2. cap. 21. Et p ceo fuit dit, que si a cest iour la ley sera pris, come fuit pris en temps Ed. 1. que sur Judgement en debt done en Engleterre, sur Testatum que le defendant ne ad riens en Engleterre, mes que il ad biens & terres en Ireland, brieve de execution sera agard al Justice ou Deputie de Ireland o leuier le debt la, quel brieve est troue in Registro brevium Judicialium. fol. 43. b. Le sum en tel case serroit lequie solonque le rate de Irish money, & nemy de English money, & ent tel coine que serroit currant en cest realme al temps de execution fait.

Et accordant a cest resolution, plusors auters cases surmisesne le point fueront apres rule & admidge, en les several courts de Record al Dublin.

Hill



Hill' s. Iacobi.

En banke le Roy.

Le case de Tanistry.

Murrough M^t Brien le demisirene Brien M^e Owen versus Cahier o cal
lagan et dom man
us Chiffe



A electione firmz enter Murrough mac Brien Pl. et Cahier O callaghan Defendant sur generall issne ioyne, le Jury troue speciall verdict, a cest effect, viz. Que le castle et terres de Drominyn, ou lentry et ejection est suppose estre fait, gisont deins certaine lieu, ou precinct de kre, appelle Publicallaghan alias O callaghans castry deing le county d Cork. Et de temps dont memory ne court, &c. ont estre de Tenure & Nature de Tanistry. Et q en tous les tres de Tenure & Nature de Tanistry deing Publicallaghan auantedit, tel Custome ad estre vse et approuve, de temps dont memory ne court, &c. viz. Que quaunt asces person morust seisse des asces Castles, Manors, Terres, ou Tenements del Nature, & Teure auantedit, que donques mesme les Castles, Manors, Terres, et Tenements doent descendre, et de tout temps auantedit, ont vse de descendre, Seniori & dignissimo viro Sanguinis & Cognominis de tel person, que tllint morust seisse. Et que le File ou le Files de tel person issint morant seisse.

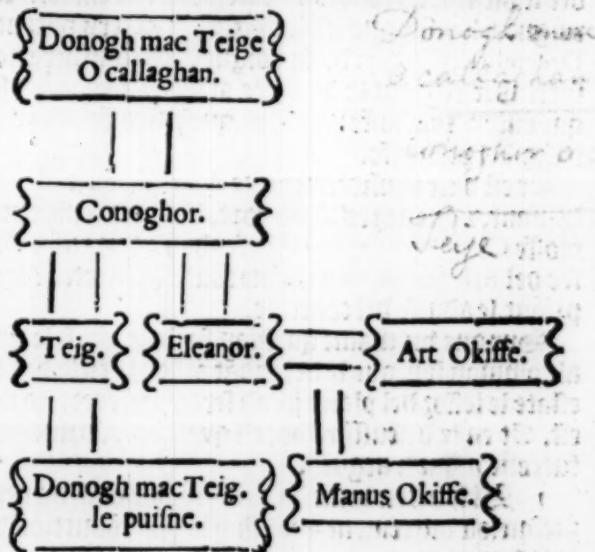
De

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De tous temps auantdit, ne fueront enheritables, De telz terres ou tenements, ou de aucun pt de eux.

Le Jury troue ouster, que (accordant a cest Pettigree.)



Donogh mac Teige O callaghan, chiefe de son nosme, fuit seissie del s'atoutie ou chieftainship de Poblicallaghan, et deg freg auantdit, solonq le custome & course del Tanistry, & issint seissie ad issue Conoghor O callaghan. Conoghor ad issue fitz a fille, viz. Teige & Eleanor, Teige ad issue Donogh mac Teige il puisne, Eleanor esteant marrie al Art Okiffe, ad issue Manus Okiffe: Conoghor O callaghan & Teige son fils deuiont en le vie del Donogh mac Teige le eigne. Apres, le dit Donogh mac Teige le eigne, per feoffement solonque le course del common Ley, execute estate al Donogh mac Teige le puisne, & al hetres males de son corps, Remainder al droit hetres del feoffoz. Donogh mac Teige le eigne morut, Donogh mac Teige le puisne morut sans tenu male. Apres que mort, un autre Conogher O callaghan esteant le plus eigne & le plus digne del sang & surnosme del O callaghan, enter en la terre ou ic. Et clame de tener ceo come Seignior ou chieftainc

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Donogh Mac Teige O'callaghan

Conoghor O'callaghan

Teige
s. vita
avv

Donogh Mac Teige.
of spounges.
S.P.

Eleanor fitz Art O'kiffe

Manus O'kiffe

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taigne de Poblicallaghan, solonq; le course del Tanistry, & fait
de ceo seisie, prout lex postulabat.

Est trouue ouster, que le dit Conoghor, tressor seisie succen-
der le dit terre, & tout son estate, droit, & enterest en ceo, al
roigne Eliz. sur que le dit roigne, p letters patentz dat. 7.
Decembris, anno 37. de sa roigne, en consideration del dit
surrender, regrant la dit terre, al dit Conoghor, & ses heirs,
que enter, & enfeoffe un Fagan, que enfeoffe Brien mac Owen
lessoz del plaintife.

Et est daccrainsit troue, que Art Okieffe, & Eleanor sa feini
deuiont, & que apres lour mort, Manus Okieffe enter, & en-
feoffe Chair O callaghan le defendant, que ent & elect le less-
ee del Brien mac Owen, & sur tout cest matter, les Juroz s
priont le aduise del court, &c.

as lez. 7. 1. hein. f. 20 v.
Sur que un maisme question surdoit, viz. si le title del hys
al common ley, que le defendat ad, ou le title del Tanist que
estate le lessor del plaintife ad sera preferre, come cest case
est. Et en le discussing de cest question 3. principall points
fueront, mouz & arguer.

1 Si le dit custome de Tanistry soit void ou nemy en lui
mesme, ou autrement abolish p le Introduction del common
ley D'engleteere.

2 Admit, que soit bone custome, & nient abolish p le com-
mon ley, si soit discontine & destroy p le feoffement, que creat
& limit estate taile en la terre, solonque le course del common
ley, ilz que ne sera reduce al course de Tanistry, quant le
estate taile est determine.

3 Si Conoghor O callaghan que enter come Tanist apz
le estate taile determine, ad gaine meilleur estate p son sur-
render al Roigne Elizabeth, & le regrant fait a lui, per let-
ters patentz.

*L*Waantz al premier point, fait obiect per le Counseil
del plaintife, que le dit custome de Tanistry, come est
troue, est bone per les rules del common Ley,
Car 3. choses doent concurre, p faire bone custome, Antiquity,
continuance, & Reason. Et est expressement troue, que
cest custome est auantient deuant temps de memozy, & con-
tinuall de temps dont memorie ne court, & que ces st soit
reasonable auxy, ceo ad toutes qualitez de bone custome.
C

Et certes, cest custome que done la terre al pluis eigne & pluis digne home del sang et surnosme, del cest que most seise, est fort reasonable, en cest Realme, p ceo que il poet mieux manure la terre, & defendre ceo, que vn enfant ou femme. Et le continuance de terre en le sang, et surnosme est bone reason et consideration de raiiser vse, Plowd. Comment. fol. 305. Baintong case, ou le dignite del heire male est expresse en plusor casez : p que cest custome ne fault reason p defence de ceo, & Litt. Libr. 1. fol. 17.a. misse cest rule, cestascouoire, que en diuers Seignioriez et divers Mannors sont plusor et diuers customes, qnt a pris Tenements, et quant a pleader, et quant al auts chosez, & tout ceo que nest pas encounre reason, poet vn est admis & allow.

Et comment que cest custome serroit repugnant al rule del common ley, ceo ne proue ceo destre vreasonnable : car les customes de Borough English, et de Gavelkind sont contrarie al common ley en le point de discent de Inheritace, & vnoqz sont approuue come reasonable customes : issint l custome del turning le Plow sur headland & vn auer, et de drier nettez sur auter terre, & 1. Edw. 4. 50. 8. Edw. 4. 19. Issint que feoffement oue garranty fuit p tenant en taile, ne serra discontinuance, ceo est contrary al rule del Ley, & vnoz bon custome. 30. Ass. p. 47. Et plusor casez fueront misse a cest entent.

Et scomme cest custome nest voide pur fault de reason, issint nest voide pur fault de certainty. Car la terre discedera al pluis eigne & pluis digne : le pluis eigne poet estre certainement conus, mes le pluis digne semble destre vncertain, car que serra Judge de ceo & certes la Ley, que est tout foizs certaine & infallible en sa Judgement. Et la Ley dirra que le pluis eigne est le pluis digne, cibien in cest Case come en auter Cases de cest nature. Et pur ces Lit. dit en le Case de 3. freres, si le mulnes purchase terres, & morust sang issue, le eigne frere auera la terre per discent, pur ceo que le eigne est pluis digne de sang : Et en le chapter de Remitter, il dit, ion home ad 2. titles a terres & Tenements, viz. vn plus auncient, & auter plus darraine, la Ley adiudgera lui eins per force del pluis eigne title, pur ceo, q le pluis eigne title, est le plus sure title, & le plus digne title,

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title, Vid. Plow. Comment. 259. a. Mes admitt, que l'affirmatiue part del custome, viz. que la terre descendera al plus eigne, et plus digne home, &c. serroit voyde vncore le negatiue part del custome, viz. que les filles ne seront inheritable, cest bone : car sont plusors bone customes en l'negatiue, encounter les expresse Maximes & Rules del common Ley. Come q feme nauera dower, ou el ad receiue part des deniers p le sale del Terre, 20. Ed. 3. Br. Customs 53. Et le custome en Kent, que le Seignior nauera terre p Escheat, The father to the bough, and the sonne to the plow. Et le custome de que Kirchen parle, fol. 149. b. que si home marry widdow el nauera dower. Et doncque si cest part del custome soit bone, Judg'mt sera done encount le defendat, p ceo que il deriuie son title del file, que est heire generall al common Ley.

Blackfriars
Et cest custome nest abolish p l'introduction del commo ley, p diuers reasons.

1. Pur ceo que est reasonable custome, et agreeable al rules del common ley, come duant est monstre : 3 s; cest reason est resolute 21. Eliz. Uyer 363. q le custome de vil b Denbigh in Gales, q vn feme couert ouesque sa Baron, poet alié la terre p surrender & examination en Court la, & ceo liera la feme, & ses heirs come fine nest toll p le statut d 27. H. 8. comment que cest Act introduce le common Ley en Gales, come appiert per le title de ceo, For Lawes and Justice to bee ministred in Wales, in like force as in the Realme of England.

2. Coment que le Brehon ley que fuit le common ley del Irlshrie devant le Conquest, soit abolish p establishment del Common Ley D'ngleterre, que fuit iustment fayt solonque la ley del nations, nient obstant que ceo fuit vn Christian kingdome, come appiert en Calvins Case en le 7. part de les Reports de le Seignior Cooke 17. b. vncor les particular customes poent estoier, come le custome de Gaulkindie in Kent, & auters customes en autre particular lieues en Engleterre remainont apres le Norman Conquest.

3. Poet estre collect per le Judgement de Parliament 12. Elizabeth cap. 5. que cest custome de Tanistry ne fuit toll per le common ley, pur ceo que per cest Act, The pretended Lords, gentlemen, & freeholders of the Irlshrie, and degenerated

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rated men of English name, holding their land by Irish custome, ont p cest act power de surrender lour tres al roign, & de prender estates p letters patents queux serront bone & effectual en la ley, enuers touts persons, forsque ceux, que ont estate, title, ou dzoit al dits terres p le due course d' common ley.

Quant al second point fuit obiect que le done en taile le remainder al droit heires del donoz, nad desfroy cest custome, pur 2. reasons.

1. Pur ceo que cest que ad terre de tenure & nature del Tanistry, nad tel estate, que il poet alien la terre en perpetuite, mes solement pur son vie, & son estate est qualifie cõe le estate del person ou prebend, issint que le fee simple est en Abeyance.

2. Pur ceo que cest custome est enherent en la terre, et courge oue la terre, & ne poet estre extinguish p aucun alienation mes continus en quelcunque maneres, cibien en possession del roy que del subiect : come customes de Borough English, & Gauelkind. Car si terre en Borough English soit done en taile, le puisne fitz auera formedone, 11. Ed. 3. fitz. Formedone 30. 32. Ed. 3. fitz. Age. 81. 2. Eliz. 176. b. Et si terre en Gauelkinde soit done en taile le Remainder al droit heires del donoz come nostre case est, cibien le remainder, que le possession irra al heires p le custome, & nemys al heires p le common ley, 26. H. 8. 4. b. 6. Ed. 6. Dier 72. b. Et comment que soit tenus, 37. H. 8. Brooke Done & Rem. 42. que si terre en Gauelkinde, soit lessee pur vie, remainder al droit heires de I. S. Si I. S. ad 4. fitz, & deuise, que le remainder tres al eigne, car il est droit heire, et ces est nosme del purchase, bnoze ceo disser de nostre case, car le remainder limit al droit heires del donoz nest forsque reuulsion, & le heire auerage per dissent. Et que le possession del Roy ne extinguish tel custome, vide 8. Henr. 7. 10. 21. Edw. 3. 46. 24. Henr. 4. 2. 3.

Quant al tierce point fuit obiect, que Conoghor O callaghan le darraine Tanist ad gaine bone estate, per le graunt de Roigne Elizabeth. Car admitt que cestuy que tient terres per le custome de Tanistry nad ab-

f

cum

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un estate per le common ley, que il poet surrender, vncoze le act del Parliament, 12. Eliz. cap. 5. enable lui d surrender, & authozise le Seignior Deputy & Counsell de faire warrants al Chauncelorz, de passer letters patentz al tiel pretended Seigniour ou freeholder del Irlshrie, & ceo esteant fait, est ouster enact, que tiels letters patentz, serront bone & effectuall en la ley, accordaunt al tenor & effect de mesme les letters patentz, enuers tous persons forisque ceux, que ont droit al ditz terres, per le due course de la common ley. Donque le graunt fait al Conoghor, esteant donques pretended Seigniour del Poblicallaghan, serroit bone & effectuall, coment que il ne surrender bone estate al common ley. Car le surrender nest que ceremony prescribed per le act destre fait per le Irlshry, al fine que serront estop en apres de claimer lour Irlsh chieferies & exactions, ou autre title forisque desouche les letters patentz. Mes le final purpose de fesoz del act fuit settle tous les possessions de cest Realme en le course del common ley.

Auxi cē grant serē bone verlus le def. que derive son estate del Eleanor, que fuit le droit heire del Donogh mac Teige le donoz, car si le custome continue come ils ont argue el ne fuit inheritable, & issint nad aucun estate p la course dī common ley.

MEs dauter part, fuit respond p le counsell del defendant, & resolute p le court, que le dit custome del Tanistry fuit boyde en lui mesme & abolish quant la common ley D'engleterre fuit establish. Mes admitt q le custome ad estre bone vncoze le conueiaunce de la terre, accordant al course bone, que del common ley, ad desroy cest custome in cē terre a toutz tourz : Et que le dit Conoghor O callaghan, ad gaine nul estate p les letters patentz dat. 37. de la Roigne Eliz. come ceo graunt est troue en le special verdict,

ET pur le primer point touchant le custome, fuit pri-
metrement dit, que custome in l'entendement del ley,
est tiel blage, que ad obtaine vim legis, & est reuera
hu binding ley al tiel particular lieu, personz, & chosez que

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ceo concerne : et tel custome ne poet estre establish p grant del roy 49. Ed. 3.3.2. ne p ac de Parliament. Mes est ius nou scriptū, et fait p le people tantū de tel lieu, ou le custome curge. Car lou le people troue aucun act destre bone et beneficial, et apt et agreeable a lour nature et disposition, ils vront p practisont ceo de temps en temps, et issint p frequent iteration p multiplication de cest acte , custome est fait, & esteant vse de temps dont memoirie ne court, obtaine le force de vn ley. Et issint le rule, 44. Ed. 2.19. est bray que nul ley oblige le people, forisque ceo que est fait per consent del people. Car consent poet estre expresse cibien facto que verbo, & ceo que est expresse facto, est plus fort, que ceo que est expresse verbo, & ceo que est expresse p plusors acts, et continuall acts de mesme le kind, est custome. Et issint briesement, custome est vn reasonable act, iterated, multiplied, & continued per le people , de temps dont memory ne court. Et ceo est le definition de custome , que ad le vertue p force del ley.

2 Secondment fuit dit , que tel custome doet auer 4. vnseperable propertie s, 1. doet auer reasonable commencement, 2. doet estre certaine p nemy ambiguus, 3. doet auer continuance sans interruption , de temps dōt memoiry ne court, 4. doet estre submit al prerogative del Roy, & nient exalt encounter ceo.

1 Le commencement del custome / car chescun custome ad vn commencement, comit que le memorie del home ne extend a ceo, come le riuier Nilus , ad vn fountaine, coment q les Geographers ne poent trouer ceo) doet estre sur reasonable ground & cause. Car si fuit unreasonable en le originall,nul usage ou continuace poet faire ceo bone, Quod ab initio non valuit, tractu temporis non conualescer.

1 Mes pur distinguisher , que est unreasonable custome, et que nemy , ceul differences fueront mise. Chescun custome nest unreasonable que est contrarie al particular rule ou maxime del positive ley : Car consuetudo ex certa causa rationabili visitata priuat communem legem, Litt. 37.b. Come les customes de Gauelkind , & Boronghenglish sont encounter le maxime de descent de inheritance, 35 . Hen. 6. 26. a. et le custome de Kent , The father to the bough , the sonne to the plowc, est encounter le maxime des Esthenees,

¶ 2

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¶ que lessoren taile entra, nient obstant le feoffement de son pere oue garranty, est encounter le Maxime de discontinuance. Et issint plusors autres customes queux sont contrary al particular rules del ley, sont vncoze tenus ¶ ad-judge reasonable, car poent auer reasonable commencement, lou ne sont preiudiciale al commonweale, ne al present interest del aucun particular person.

Uncoze custome poet estre preiudiciale al interest de particular person, ¶ reasonable auxy, lou est ¶ le benefit del commonweale in general. Come custome de faire Bulwarke¶ sur fre de vn aut ¶ le defence del realme, 36.H.8.Dier 60.b. ¶ de razer measong in publico incendio. 29. H.8. Dier 36.b. Issint de turner le plow sur le headland de vn autre, en fauour de husbandry, ¶ de drier netz sur terre de vn autre, en fauour de fishing ¶ maintenance de nauigation, 8.E.4.18. 21.E.4.28. Mes custome ¶ est contrary al publike bien, ¶ est le scope ¶ generall end de tous leyes (Salus populi suprema lex) ou iniurious ¶ preiudiciale al multitude, ¶ beneficial tantum al aucun particular person, tel custome est repugnac al ley de reason, ¶ est desuis tous positivie leyes, ¶ ¶ ceo ne poet auer reasonable ou loyall commencement, mes est boyde ab initio ¶ nul prescription de temps poet faire ceo bone.

Et pur ceo plusors customes queux ount estre adjudge boide en nostre liuers, come esteant vreasonable encounter common droit, ou purement encounter ley, si lour nature ¶ quality sont consider, serront troue iniurious al multitude, ¶ preiudiciale al commonwealth, ¶ defauoir lour commencement (pur le plus part) per oppression & extortion des Seigniors & graund homes. 2. Henr. 4.24. En replein le defendant abobo que la terc ou ¶ est vn prie, ou le plain-tife doet auer common ames le fein fanche : mes que est tel custome deing le Mannoz, que nul commoner metterai eins les auers tantque le seignior ad mist eins les auers. Et le Markham dit, ceo est maruelous custome, si le Seignior ne voet vnques metter eins les auers, les commoners perdront lour common. Cest custome la fuit adiudge boide, pur ceo que ceo fuit iniurious al multitude de commoners, ¶ beneficiall tantum al Seignior de la bill. Issint per Litterton fol. 46. Custome que le seignior auera fine de son

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son feanthenant p mariage de sa fille, est tenus boyd : 5
costume que le Seignior del mannoz detainera distresse
ppr lez demeasnes, tante que sine soit fait a luy p le da-
mage a sa hoimme, est auxy boyd issint, 3. Eli. Dier 199. b. cu-
stome que le seignior prendra p harriot le beas de estran-
ge le vant & couchant sur la tete de tenant : Et 21. H. 4.
costume que le seignior del mannoz auera 3. l. per pound-
breach cheitun estranger. Et 21. H. 7. 20. custome que te-
nant ferre amercie sil ne mis ses aures en le pound del seig-
nior. Tous ceux costumes coment que sont beneficial al
seigniorz en particulier encore per ceo que sont preindicti-
on al multitude de subjects, ou al commonwealth en ge-
nraall, & commençent per tout a blumperation, & nemy p ho-
luntary consent del people, per ceo sont adiudge unreason-
nable p boyd en ley.

2. Custome doet estre certaine. Car incerta pro nullis ha-
beatur. Et consuetudo ex certa causa rationabili visitata pri-
uat communem legem. La. 3. des essential qualties de
bonne custome sont expresse, viz. Certaintie, reasonablenesse,
village ou continiance, 13. Edw. 3. Fitz. Dum fuit infra etat-
em. 3. Wyche de Dum ruit infra etatem fuit post beys en-
fance, le tenant pleade custome, que quant enfant est de
cest age quel il porc counter, xii. d. ou measture un Aine de
Wyche que son feathement ferre bone. Cest custome est ad-
iudge boyd p le incertaintie, 14. Edw. 3. Fitz. Barr. 277. En
tropes de gardes empotes, le def. pleade custome, qd celi
des denares del mannoz que primes vient al lieu, ou ac-
cusa contes windfals la : cest custome est boyd auxy, per le
incertainty. Et la reason alleage la est, qd ceo ne gist in pre-
scription, que gist en bolunt del home, car la bolunt del ho-
me est incertaine, 42. Edw. 3. 46. en Rep. post per Princes
de Shaston, le def. avoit come batiste al viscount de Dor-
set, qd prescrive de tenir son tunc en le lieu ou se. Et de a-
utre de roterre de demy mark, ou chival, come un remard
al cheval tunc. Cest prescription est tenus boyd p le in-
certainty. Cest auxy vila, que ceo gill en le volume del
donor, que est incertaine.

Cest autre ceo, 2. reasons fueront mise pur que incertain
continue serroit boyd, 1. p ceo que incertain chose ne por-
tare continu le temps dont memozy ut Court, sans

§ 3

inter-

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interruption, & pur ceo que homme ne poet prouescher en chose que ne puissoit al commencement estre bien graunt 13. Henr. 7. & 6. 6. mesme bincertain chose ne puissoit laquest estre bie graunt, & pur ceo p̄scription de bincertain chose en bold auxy.

3. Custom deoit aultercontinuante sang interruption de temps dont memory ne court pas. Car il fait discontinuite de temps de memory, le custome est aulterome si corps hold soit lese pur le Seigneur del manoir, pur vie ou pur ans, accordant a la force de common ley, neserra iamais demise come Copihold, accordant al custome appes. 8. H. 8. Dier 3 oob. Consecrando semel re probata non potest amplius induci. Car sicutte continuite fait custome, dis continuace de lroy ceo. Nihil tam conuicis est natureli aequitati, quam vnumquodque dissolui, eo ligamine quod ligatum est.

4. Custome que se exalt sur le prerogative del Roy, ceo est bold auxy envers le roy. Car p̄scription de temps fait custome, mesme nullum tempus occurrit Regi 49. Ed. 3. 3. telle case de Whit Tawers, le custome de London d'fait corporations est tems bold. Car le roy soleosit poet ceo fait pur son prerogative. 3. H. 8. 21. 2. custome de London de retainer biens mis en montage, tant que satisfaction soit fait blamoray sur eux approupt, ne estend al Jewels del roy. Cest homme ad Toll, ou bozech, ou scrap, p̄ p̄scription, ceo ne estend al biens du roy. Telle p̄scription de amer sanctuary pur treason, ou d'autre Estalla felonum, &c. est bold vers le roy, pur ceo q̄tial privilege exaltat se in prerogativa regis.

1. Henr. 7. agibon p̄. Ilz alz en la noblesse etz. Et auant que les biens d'auant le 100. p̄ceq̄ lais tenus d'auant le 100. sup̄. ne exigent
Pur cez temps d'customes en generall, eſt particulierement
Custom de Tanistry fuit examiné. Et p̄mierement fuit resolve,
que ce custome fuit unreasonable, & boldab initio. Car
est incontraire la common wealth, & ha in destruction de ceo
tout ouſtemps. Car commonwealth ne poet estoier sans
certaine omorosity detenu, ou sils droit de inheritance de
les terres ne rest en nulluy.

Cac si homes naissent telle estat le en leur terres, que
lour isses, ou prochein cousins de leur sang poent inherer,
issint que ilz leuoient en certaine p̄ceq̄ quel person ilz ex-
ercent

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naslent, & defraudent lour ames de pleasure, come Solomon dit, ils ne violent vngues improuer lour terre a le meilleur bse & profit, ne edifier measons de aucun value, ne doner ciuité education a lour infant's, mes aiant respect al present temps tant solement, serront tout ousterint careesse de lour posterity. Et ceo est le veray caule del Barbarisme & desolation que fuit en tous les Irish countries ou ce custome de Tanistry fuit en bse.

Auxy, ceo ad estre graund cause de les continuall felonies & treasons commis per les Irish en temps paravant. Car quāt ils scauoent que lour feme's ne serront endomes, ne lour issue's enheritable de lour terres, ils committeront tels crimes que greinder audacity: car pur affection a lour feme's, & enfant's, homes plus eschuoent a faire aucun felonie's, come Litt' dit 196.b.

Pur que ce custome que lessia l'enheriance destre en Abeyance, & le freehold auxy, apres le mort de chescun tenant est unreasonable, & va en destruction del commonwealth. Et p̄ ceo nostre ley (que est le melior le y de mound p̄ fait & preferuer un commonwealth) comit que ceo suffre le fez simple en aucun case destre en abeyance pur un peu de temps, vnoce ne voet vngues suffre le freehold destre en suspens, mes abhorre le suspension de freehold, cōe natura abhorret vacuum. Et pur cest reason, si leas pur ans soit fait, le remainder aldroit heirs de I.S. la limitation de remainder est void. Et si tenant del roy morut sans heire, ou si dame del royen tasse morut sans issue, la terre immediatment est en possession del royn sans office, pur aborder ce abusidley. Hen 7.2.b. & pur cest reason, 6. Edw. 6. Dier 71. Terre ne poet estre appendant al office p̄ vie, mes al office de enheriance tantum, car si serroint appendant al office pur vie, ensueroit graund inconuenience, come est la dit, viz. le scandelenement serroint en suspens apreg le mort del officer, tant que nouel officer soit fait ou create, si le office ne distrend al un heire, ou al un home que ad perpetuall succession per le common ley. Et cest le plus apt case en la ley destre ressemble al case en question. Car per le custome de Tanistry, le plus signe, & plus digne home ne vient eins come heire (car heire est touz soit le plus procheine de sang) mes come

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come un successour bnoze par ces que nest enccporate per le common ley, come by person, ou prebend, 40. Edward. 3. 27. ne vien eings en course de perpetuall succession, mes come officer par vie tantum, & per election: mes tanque election fait, le franktenement del terre fuit en suspens, & le fee simple & inheritance fuit toutz foiz en Abeyance & nesc fuit nul fee simple in actu al astur temps, contrary al principe del common ley, que de chescun terre il y ad fee simple Litt. 144.b.

Cest custome est auxy unreasonable & auer reason, viz. & ceo que cest custome (come est troue y le speciall verdict) que la terre descendra Seniori & dignissimo viro, &c. appert plaignement de auer commencement y le usurpation & tyranny de ceux que fueront plus potent entre eux. Come plusoz s customes, dont mention est fait devant, adiudge en no[n]tre l*le*tre b*o*rd en ley, commenceont y oppression et extorsion de seigniorz. Car le antient Breton ley fait, que t*el* terre iroit al plus eigne del Scept, q*u*i fuit le beray Tarnis, & appeler en latine Secundus, esbant successor, apparant: mes p*ut* ceo que le plus eigne ne fuit tout foiz le plus auant, ou ne auoit le greindre number des followers, ni auant plus powerfull person y faction & forte main intradoit sur le plus eigne, & procuroit lui mesme desir elect come esbant plus digne. Et coist que ce custome ad estre use de temps bout memoie ne court, viz. de ester un tiej que soit plus digne en le opinion del people, bnoze ceo fuit malveyes en le commencement, & malueyes en le continuance, car fuit la cause de grand effusion de sang, & multz autres mischies.

3. Auty le negatife part de cest custome est unreasonable, que tout ouderment exclude les filles de enheriter estoit de fee simple. Car le Tamis, ill ad aucun estate de enheritance, n*o*n fee simple, car nad aucun particular estate en tant immit a los & les heires males de son corps: & ell encontre le nature de fee simple de excluder le heire female, il ne deure male female. Et sur ceo si leofteint soit fait al I.S. q*u*i les heires prouiso que les filles ne enheriteront, ceo est boyne prouiso. Et il certe soit done al I.S. q*u*i les heires males, d*u*ill fee simple, & le heire female enheritera en default del heire

hérité male. Et ceo fuit adiudge en Parliament en le cas d' Multon, viz. q'en tel cas ses Soers enheriteront, 18. Ass. p. 5. 27. H. 8. 27. a. 9. H. 6. 22. Litt' fol. 6. b.

Et pur ceo per le Statute de Rutland, 12. Edw. 1. que establish le common ley en North Gales ou le veray Irish custome de Gauelkind fuit donques vse, y quel custome le bastard enheritoit oue le legitimate, a les females fueront tout ousterment exclude de enheriter, come en cest case icy, fuit ordeine, Quod haereditates remaneant partibiles inter heredes masculos, sicut esse consueverunt, & fiat partitio sicut fieri consuevit, hoc excepto, quod bastardi de catero non habent haereditates, nec habeant propartes cum legitimis nec sine legitimis. Et si forte haereditas aliqua extunc pro defectu haeridis masculi descendat ad legitimas mulieres haeredes ultimi antecessoris sui inde sefisi, volumus de gratia nostra speciali, quod mulieres legitimæ habeant propartes suas inde sibi in Curia nostra assignandas, licet hoc sit contra consuetudinem Wallensicam ante visitaram. Et cest Ordinance accord oue le diuine Ordinance en le Case de Zelaphhaad, num. cap. 27.

Secondement fuit resolute que cest custome fuit boyd pur le incertainty. Car ou per cest custome le terre descendent droit, Seniori & dignissimo viro sanguinis & cognominis de cestu que morut seisse, 1. le person est incertaine, 2. le estate est incertaine.

1. Pur le person a que le terre descendroit, comment que seniori soit nosme assets certaine de prendre estate, 26. Eli. Dier 337. a. W. Humfreston conuey terre al vse de sa femme pur vie, le remainder Seniori puero de corpore ipius W. legitime procreato, cest limitation de estate fuit assets certaine & bone. Car seniority consist en priority de temps, & les distinctions & periods de temps secundum prius & posterius sont certaine, & poent estre bien proue & trie. Et pur ceo le seignior per priority (quant al gard del corps del hêtre) sera preferre devant le seignior per posteriority, 11. Hen. 4. 18. 21. Ed. 3. 11. Stat' de W. 2. cap. 16. Et si leas pur vie soit fait, le remainder al cestu que primus viendra al postoles, le remainder est bone, 12. H. 7. 28. iijijnt 14. E. 3 Fitz. Barr. 177. Custome que le tenant que primus vien-

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þis al Bois, auera les windfals, cest bone, car le temps de premier veneer poer estre bien trié, ou si limitation fuilloit al plus procheine de sang, ceo ad estre assés certaine. 30.
Ass. p.47.

Mes cest patol dignissimo est cy incertaine, que ne poer estre reduce al certainte per aucun triall ou proove. Car le dignité de tel home gist en le opinion de multitude, que est le plus incertaine chose de mounde.

Scinditur incertum studia in contraria vulgus.

Illint que alcuns d'iront, que le plus docte et savant home est le plus digne, alcuns que le plus valiant home, alcuns que le plus riche home, alcuns que le plus liberaill home. Et illint le multitude ne puilloit vngues agreeer, et pur ceo le plus potent home fuit touuois preferer, q' est contrarie al toutz leyes.

Inde dataz leges, ne fortior omnia posset.

Mest si serroit referte al Judgement de plus sage hōe que fait vnguess, de Judger que est le plus digne home deins alcun pais, si prendroit bien long temps de aduiseint en cest case.

Mes fuit dit, que la ley voet Judger de plus digne, et adiudgera le plus eigne destre le plus digne. Certes, en cases de descent de enheritance la ley respect le primogeniture, birthright, et lproximitie et entierrie de sang, mes ne done aucun regard al worthines et sufficiencie del heire. Et pur ceo la ley iect enherittance cybien sur Ideott, ou enfant, come sur home de descretion. Pur que cest difference est prise en Sis Henry Nevils case Plow. Comment. 379.b. que un Officer pur vie, ne poer assigne ouster son office, sans speciall parolt en le graunt, car la ley entend iux destree un officer de Trust et chosen pur son science, et diligence, viz. pur son worthiness. Mes officer de enheritance poer graunt ouster son office, car la ley ne entend que le graunt soit fait sur confidence del sufficiencie del officer, car poer descend al femme, al enfant, ou al Ideot. Et pur ceo la ley ne respect dignité de person en case de descent

descent del enheritaunce. Car estoient que primogeniture ayant vn prerogatiue done a ceo per la ley de Dieu, soit preferre auxy en nostre ley, & issint le plus eigne, soit en aucun sens le plus digne, bnoce per cest custome la dignite est entend destre vn autre quality que seigniority, viz. vn autre vertue ou merit en le person que doet concurre ou le seigniorite. Car autrement le parol seigniorie ad este sufficient, & le parol dignissimo ad este idle, & p ceo le person nest plus certain en cest case, que en le case: 11. Edw. 4. 1.b. ou done est fait al vn des enfantz de I. S. ou 11. Henr. 7. 13. ou graunt est fait ls ou ln, ou, 1. Mar. Dyer 91. a. ou graunt est fait de tant des arbres que poent reasonablement este spare. Et plusoz cases de encertaine graunts fueront mise: & fuit conclude, que tel Graunt seniori & dignissimo serroit boyde, & pur ceo tel limitation per prescription est hold auxy, solonque le rule prise 13. Hen. 7. 16.b.

2 Le estate est incertaine. Car chescun que ad estate de enheritaunce, ad ceo, ou en naturall capacite, ou en politique capacite. Mes Tanist ne ad estate de enheritaunce en son naturall capacite, pur ceo que le plus eigne & plus digne nest pas heire. Car le plus digne vient eins per election, & doncques nest heire, car Deus solus hæredem facere potest non homo. Bracton, 62. & nest troue que la terre descendroit Seniori & dignissimo ut hæredi. Mes en Gauelkind tousz les sitz sont appell heires, libr. Intrac. 143.a. ou le custome est pleade en cest Manner, viz. Quod terræ & tenementa de Tenura & Natura de Gauelkind sunt de tempore, &c. Inter hæredes masculos partita & partibilia, & descendere debent dict. A. B. C. vi filius & hæredibus, &c. Issint le puisne sitz en Burrow of English est tousz soitz nosme heire.

Auxy le Tanist ne ad enheritaunce p succession en politiqz capacite, si ceo q nest encorporate p le common ley, come person, ou prebend, &c. Et si ne ad foizque estate p vie, ceo ne poet discender. Et issint si ad nul estate de enheritaunce de q la ley poet p̄t notice, & p consequence le incertainty d son estate fait ceo hold en ley.

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Tercerment fuit resolute que cest custome fuit interrupt & destroy en cest terre, quant Donogh mac Teig execute estate taile de ceo solonque le course del common ley. Car est difference ou custome courge oue le seigniory, & ou ceo courge oue le tenancy: car ou custome courge oue le tenancy ne sera destroy per conueiance secundum curium communis legis: come si sine soit leue de terre tenus en Gaulekind, comment que soit vn querre, &c. Ed. 6. Dier 72. 6. Si le course de enheritance soit alter & fait descendable al heire al common ley, vnozore fuit agree per le court icy q le custome ne fuit alter, & issint fuit tenus de terre en Borrough English, &c. Eliz. Dier. 179. b.

Mes cest terre en question est parcel des Demesnes del chieftaine ou seignoz del Publicallaghan. (Car les terres queux baont oue less cheifties tantsolement, sont de l'enure & Nature de Tanistry) & pur ceo est semble al copihold tre que est parcel des demesnes del seignior, & si le seignior execute estate de ceo accordant al course del common ley le custome est ale a toutes iours. Issint est del Homage ancestrall, que est per prescription, & continuance de seigniory en sang del seignior, & del tenancy en sang del tenant, & vn alienation solement le Homage ancestrall est ale, & le garranty est destroy & reprisall de mesme l'estate ne iammes reducera ceo, Litu. 33. b.

Auxy cest custome de Tanistry, nesci enherent en la terre, come le custome de Gaulekind, ou Borrough English, mes est plustoft vn personall custome que va oue person d plus eigne & plus digne, & pur ceo quant la terre est vn foit's conuey al autre person, viz. al heire al common ley, cest custome est avient a toutes iours.

DArraignement cest custome de Tanistry serroit void 4 Deniers le Roy, come esteant preiudiciale al prefait prerogative del Roy. Car ou toutes terres sont tenus mediatement ou immediatement del roy, per cest custome le Roy perdroit tout le benefit de son Seigniorie paramount en cest terre, que fuit quasi in manu mortua, dont le Roy ne puissot vnoques aver ne wardship, ne escheate, ne aucun manner de seruice testifiant que il fuit Seignior

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Seigniorz de la terre. Et Litt' 3 i.a. dit, que serroit inconuenient, & encounter reason, que aucun sera tenuant al auter de estate de enheritance, & vncoze le Seigniorz auera nul manier de seruice de luy. Et pur cest reason, le custome de Kent, the father to the bough, the son to the plough, extend forisque al felony, & toll le escheat de communon person seulement, mes ne extend al treason, ou le Roy auera le escheate, 22. Edw. 3. Fitz. præscr. 40. illint prescription de auer sanctuary pur treason est boilde, 1. Henr. 7. 23. Et pur ceo coment que tel Tanist nauoit estate de enheritance per le custome, vncoze sil ad este attaint de treason, de course de Eschequer icy ad tous foits estre de leisser la tre come forfeit on escheate al corone, niēt obstant celi custome de Tanistry.

Mes admit, que celi custome ne ad este boide en luy meisme, vncoze le introduction & estableissement del common ley D'engleterre ad abolish ceo. Ceterz customes de Tanistry fuit le communs custome del bre de Ireland deuante conquest, & generalment use entant le Irish countries, en mē le nature & forme come est trouer p. Ce qui de content de que luy este abolish per le estableissement de un autre generalley en mesme le point. Mes p. le Introduction del common ley D'engleterre en celi realme de Ireland, est astauoir, que l'island est Island ne fait pleinement conquer, & reduce al subjection de la corone D'engleterre, tout al un temps, vnes & autres personnes au general ages, & illes la common ley D'engleterre ne fait communiate a celi a les inhabitants si mal de temps en temps p. les officiell persons, & famelis del Irlande, & celi ales qui fait please de graunter le benefit & protection de ses leys, qoi l'island n'ose faire, qoi il estoit aux
Institut comment que le ordinante per que da common ley D'engleterre soit establest en Ireland, fuit general conte de Lancastrie Archib. Mariendond, 30. H. 3. patens membri
comitatis Ioricensis: Quis presentem suum sibi auctoritate & pro unitate terrarum (note celi parol de vniōn) prefisiōn
et quod omnes leges & consuetudines que in regno Anglie
tradidit in Hibernia respectu, & eadem Terra iisdem legi
bus subiacet, & per eadem negatur, statut Johannes Rex com
sis

G

illuc

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illuc esset statuit, & firmiter mandauit, ideo volumus, quod
omnia brevia de communione iure quae currunt in Anglia, similiter
currant in Hybernia sub novo sigillo nostro, &c. in cuius
rei &c. Teste me ipso apud Woodstock, &c. Coment que ce
ordinance ou brieve del Roy soit generall, vnozore est ma-
nifest per tous les auntient Records de cest Realme, que
la common ley d'engleterre fuit solement mise en execu-
tion en cest part de Ireland, que fuit reduce a diuide en
counties, & possesse par les English Colonies & nemp en
les Irish countries ou territories, que ne fueront reduce en
counties, jusques al temps de Q. Mary, & Q. Elizabeth, &
vnozore fueront en extent de terre plus que 2, third parts
de cest Island.

Car le roy John fesoit forisque 12, counties en Leymster,
& Mounster viz. Dublin, Meth, Vriel, Kildare, Caterlagh, Kil-
kenny, Wexford, Waterford, Corke, Kety, Littmeric, Typper-
ry: Mes les autres provinces & territories de ce realme,
que sont des diuide en 21 counties alarge, esteant donqz
en habit, la plus part, & les mere Irish, fueront hors des
limits de tout hypp ground, & le space de 300 ans apres le
fesans de les primer 12, counties.

Et si con fuit impossible que la common ley d'engleterre
puissoit estre execute en tenux counties ou territories, Que
la ley ne poet estre mise en execution ou breue domini regis
non currit, & le brieve d'roy ne poeut courir, mes on en tolle
tous vnozore, ou autres ministres de la ley de servir a de-
turner les brieses del roy. Et tout au moins, vnuzalguis ce
que par telle cause apliert par les auntient Records, que
les mere Irish fueront hors des protection del roy, & que
Ley d'roy soit 400, que la ley del roy, & les brieses del roy des-
tressent pour queuy hont est protect & asse, & maintenuz du temps
que home est hors des protection del roy, & que la
desire apliert ou protect per la ley de l'islande par le bailliage del
Roy. Et que les mere Irish haiby ne auont le benefice
de la ley d'engleterre, sans special charters del roy, ou
enables sur tenux Records enuant, entor autrez, bastant
monstre. (touz ce loys qui estoit) multe chose d'autre q
ce ilz auoient. Clas. membr. 77. in Archivis Terr. Londola
Rex dilecto de fideli suo Johanni Darcy le Neubie Justitario
suo Hyberniae salutem. Ex parte quorundam hominum de Hiber-
nia

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nia nobis extitit supplcatum , vt per statutum inde faciendum concedere, velimus, quod omnes Hybernici, qui voluerint legibus vntantur Anglicanis , ita quod necesse non habeant, super hoc, Chartas aliquas à nobis impetrare. Nos igitur certiorari volentes, si sine alieno præiudicio , præmissis annuere valeamus, vobis mandamus, quod voluntatem magnatū terræ illius, in proxmimo Parlamento nostro ibidem tenendo, super hoc cum diligentia perscrutari facias , & de eo quod inde inuenieritis, vna cum vestro consilio & aduisamēto, nos distinete & apperte cum celeritate, qua potestis, certificetis, hoc breue nostrum nobis remittentes, &c.

2 Inter communia placita. 28. Ed. 3. in Archiuis castri Dublin. Simon Neal quæritur de Willielmo Newlagh, de placit' quare vi & armis, apud Clandalkan in Comitatū Dublin, die lunæ proxime post festum sanctæ Margretæ virginis anno regni Regis nunc 28. Clavsum ipsius Simonis fregit, & herbam suam ibidem cum bestijs suis, viz. afris, vitulis, & bidentibus conculcauit & consumpsit, contra pacem, &c. Vnde dicit quod deteritoratus est, & damnum habet ad valentiam, 20. s. & inde producit sectam, &c.

Et prædictus Willielmus modo venit, & dicit, quod præd Simon est Hyberñ, & non de Quinque sanguinibus, & petit iudicium, si ipse ei respondere teneatur.

Et prædictus Simon dicit, quod ipse est de Quinq; sanguinibus, viz. de les Oneyles de vttonia, qui per concessionē progenitorum Domini Regis libertatibus Anglicis gaudere debent, & vtuntur, & p libris hominibus reputantur, & hoc offert verificare, &c.

Et prædictus Willielm dicit q ipse Simon est Hiberñ, & nō est de les Oneyles de vttonia nec de Quinq; sanguinibus, & de hoc &c. Ideo fiat inde iurata, &c.

Qui iurati dicunt sup Sacrament' suū, q pdictus Simon est de Natione des les Oneyles de Uttonia, & sic est de Quinque sanguinibus, &c. Et assidunt damna ad sex denarios, ideo consideratū est quod pd Simon recuperet versus pdictū Willielmū damna sua pdicta, & pdictus Willielmus committatur Galæ quousque, &c.

Per cest Judgement appiert, que fueront cinque pñcipall septs ou sangues del Irisbrie, enable per geant del Roy, de auer le benefitte del ley D'engleterre, & appiert p

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vn autre record queux furent les ditz Cinque Heptes ou
langues,

3. E. 2. Inter placita coram domino Iustitiario, &c. in Archiu. Turr. Bretingham in castro Dublin. Frater Phil' ns de Mōsterworth, & frater Richardus de Abbedley Canonicus de l'Anthony iuxta Gloucester, Richardus Fox, & Willielmus de Stowell attachati fuerunt ad respondendū Willielmo O Kelly de placito, quare, cum dominus Rex cepisset in protectionē suā specialē prædictū Willielmū o Kelly, homines, terras, tes, redditus, & omnes possessiones suas, inhibens omnibus & singulis, ne quis ijs inferret, vel inferri permetteret iniuriā &c. Idem Philippus, Richardus, Richardus, & Gulielmus, in ipsum Willielmū o Kelly apud Duleek, vi & armis insultū fecerunt, ac ipsum ibidem forstallauerunt, cuperunt, & imprisonauerunt, & alia enormia ei intulerunt ad damnum &c. & contra pacem & protectionem domini Regis, &c.

Et prædictus Philippus, Richardus, Richardus, & Willielmū ven. & defendant vim & iniuriam quando, &c. & dicunt quod non tenentur prædicto Willielmo ad hoc breue respondere, quia dicunt, quod prædictus Willielmus o Kelly est Hybernicus, & non de sanguine aut progenie eorum, qui gaudent lege Anglicana; quoad brevia portanda, qui sunt O'neil de Ultonia, O'Conor de Connacia, O'Brien de Thomonia, O'Molaghlin de Midia, & Mac Murghogh de Lagenia, & petunt iudicium, &c.

Et prædictus Willielmus o Kelly dicit, quod reuera ipse est Hybernicus, sed de progenie de O'neil de Ultonia, habens ortum suum de sexu Masculino eiusdem progeniei, & petit instanter: iudicium & prædictus, Philippus, Richardus, Richardus, & Willielmus dicunt, quod idem Willielmus O Kelley admitti non debet ad dicendum quod sit de prædicta progenie de O'neil, quia si esset de progenie illa, hoc appareret in eius cognomine, quis tunc diceretur Willielmus O'neil, & non Willielmus O Kelly, & vnde dicunt, quod ipse non est de progenie de O'neil, &c. Et hoc parati sunt verificare, &c. Ideo inquiratur per patriam. Et præceptum est vic. quod venire faciat coram &c. à die Paschæ in 15. dies ubique, &c. duodecim, &c. qui nec &c. per quos &c. ad recognoscendū, &c. Idem dies datum est partibus prædictis, &c. Postea ad diem illū venerunt præd' Philippus, Richardus, Richardus, & Willielmus,

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mus, & prédicte Willielmus O Kelley, primo, secundo, tertio, & quarto die solemniter vocatus non venit, &c.

Apres cest temps viz. anno 40. Edw. 3. en le Parliament tenuz al Kilkenny devant Lionell Duke de Clarence, fuit enact, que nul compaternity, nurture des enfantz, ou mariage soit fait entre les Anglois, ou auters esteant a la peace del Roy, oue les Irish, sur paine de vie et member, et comment que p mesme l estatute de Kilkenny le Brebon Ley, que fuit le common ley del Irishry, soit declare destre nul Ley mes un leud custome, vnoce ceo ne fuit tout ousterit abolish entre les Irish, mes toutsolement defend a phibite destre vse entre eur queux fueront de English race, et les Irish fueront lessle alarge, destre rule p lour barbarous customes come devant.

Et apes le fesans de cest Statute de Kilkenny, en tous auters Statutes faitz en temps del seuerall Roys, jusqz al temps de Henr. 8. ou aucun mention est fait des troubles & guerres en cest Realme, les Anglois sont appelle Rebels, & les Irish sont appell Enemis.

Mes apres le Act de 33. Henr. 8. cap. 1. p que est recite, que comment que le Roy D'englettere p le nomme del Seignior de Ireland, auoit tout manner de royll power, et Jurisdiction en cest Terre, vnoce p ceo que il fiait assume le nomme et stile del Roy, les Irish Inhabitants de cest Realme nauoient estre cy obedient al Roy D'englettere, et ses Leyes come de droit ils deuoient estre: Pur que est enact, Que le Roy Henr. 8. ses heires et successours seront a tous iours Roys de Ireland, & auoient le nomme, Style, et Title de Roy de cest Terre, oue tous honoys, prerogatives, & dignitez apperteinantz al State et Maistrie del Roy, come unite et annex al Imperiall Crowne D'englettere, &c. Apres le fesans de cest Act, le dit difference de English Rebels, et Irish Enemis, nest destre trone de Record, mes tous les meir Irish fueront d'hoys, enauant accept et repute subiects et liege homes a les roys et roynes D'englettere, et auoient le benefit et protection de la Ley D'englettere, quant ils violenter ou demander ceo.

¶ Et al entent que la Ley D'englettere puissloit auer un free course in et y tout le Realme de Ireland (come est expelle

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expresle en le Statut d i i. Eliz. cap. 9. fuit prouide en seuerall Parliaments, viz. 3. & 4. Phil. & Mar. cap. 3. & 11. El. cap. 9. que commissions serront agard, & reduc en Shires et Hundredes, tous les Irish countries que ne fueront Shire ground duant: et accordant a ceo en les seueral governementz de Thomas countee d Hussey, Sir Henry Sidney, et Sir John Perrot, non soleint les Irish territories en ls confines d Leymster, mes auxy les entit Provinces d Conaught et Ulster, esteat hors d tout shire ground duant, fuerot diuide et distinguibz en seueral counties et hundredes, et seuerall Viscounts, coroners, et justices d Peace, & autres officiers et ministers de la Ley D'engleterre ont estre de temps en temps constitue en ceux counties, & seuerall Patents & Commissions desouth le grand Seale d Ireland: et p cest mean la common Ley ad estre communicate a tous persons, et execute p tout cest Realme p plusors ans passees.

D'acrainement, nostre Seignior le Roy que ore est per un speciall Proclamation in Anno 3. de son raign, declare publish, que il ad receiuie tous les natuves de cest Realme en son royll protection, &c. Per que fuit cleerment resolute, que la common Ley D'engleterre est ore establish vniuersallement p tout cest realme de Ireland, et q tous persons et possessions deins cest realm dovent estre gouverne p les rules de cest ley, et q chescun subiect inheritera son terre en Ireland, viz. p le just & honorable ley D'engleterre. En cest māland, p mesme la ley, p que le Roy enherit la corone de Irner, et p ceur degrees, le common ley fuit introduce et establish en cest Realme.

Et quant al cest Terre en question, ceo gist en le county de Cork, que est un des auctient counties fait per le Roy John, et en que le common Ley D'engleterre ad sa course pur le space de 150. ans al meines apres le conquest. Per que, comment que per le incursion del Irishie le course del common Ley D'engleterre fuit interrupt & discontinue en cest countie per un long space de temps, bncore l execution del common ley esteant reuive & restoze, le custome de Tanistry & tous autres Irish customes nient agreeable al rules del common ley, sont anieits et abolissh, come ils fuerot s l primer introduction d la ley D'engleterre en cest county.

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Et comment q cest custome de Tanistry ad estre custome de vn particular lieuo tantsolement, vnoce esteant repugnant a les rules del common ley, serroit abolish per le introduction & establishmēt del cōmon ley en cest Realme : & nest semble al Case de Wales Dier 21. Eliz. 363. b. ou particular custome de Denbigh continue nient obstant le statute, q establish le common ley en wales : car l'entēt d'i fesors de cest statute appert destē q les customs d'Wales agreeable al ascum customs d'Engletēt, sront pserue, car p mesme lestatut est prouide, q Commission issira de examiner les Welch customes, & que ceux que serront troue reasonable , sur Certificate des Commissioners serront allow.

Auxy cest custome ne poyt estre ressemble al custome de Guelkind en Kent que auoit continuanc apres l'Norman Conquest : car l'common ley Dengleſſe ne fuit introduce p le Conqueror, come ad estē obſtue, & proue tresdoctint p le Seignior Coke, in le Preface al tierce part d'les Reports.

Fuit auxy resolute que rien passe p l'Grant de la Royne Elizabeth fait al Conoghor O Calaghan, come ī est troue p l'hdict : car le graunt est fait en consideration d son surrender, & il ne claymoit eins mes come Tanist q ad nul estate dont la Common Ley pris notice, et issint son entry fuit forſque abatent apres le mort del Donogh mac Teig, le puisne, p que le Graunt del Roygne fayt en consideration de tel estate surrendred, est boyd en Ley. Barwicks case, 5. part des Reports del Seignior Coke, 93. b. le case d'Alton Woods, 1. part des Reports del Seignior Coke, 43. b., 18. Eliz. Dyer 252.

Et quant al statut de 12. Elizab. cap. 5. pur accepting surrenders del Irish Seigniors, ceo ne fait le Graunt bon. Car cest Graunt ne fuit fayt per force d'ce Statut, ne accordant al forme pſcribe en cest Statut. Car l'Statut requis diuis necessaty circumstances, q̄q̄s fueit omitt, en le obtayning et passing de cest Graunt. Car primement, le pretended Irish Seignior doet offrir de surrend, donques cest offer doet estre aduertise al Roygne, & sur eco la Roygne doet signifier sa pleasure al Deputy, ou autres chiefe

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chiefe Gouernoz p ses Letters ou instructions desouth sa signature, que le surrender sera accept, et grant fait al tiel pretended Seignior p Letters Patents. Et sur ceo, le Deputie et greindre part del councell de cest Realme doent faire warrant al Chancelloz d accept le surrender, & passer les letters Patents accordant a tiel letter ou instructions. Ceux circumstancies ne sont troue p le bdict destre obfue en le passing de cest grant, et p ceo ne sera entend destre fait p force de cest Statut, et p consequence ne sera fait bone et effectuall p ceo.

DArraignment, ou fuit obiect p vn del Councell ou le plaintiff, que la Royne Eliz. sera dit en possession de cest terre, p vertue del primer conquest d'Ireland, cnuers Donogh mac Teig O Callaghan le feoffor, que ne puisoit derriuer aucun title al cest terre de la corone, et p ceo, son feofement p que le Defendant clame, fuit vny, esbant fait per intrudoz sur le possession de la Royne : fuit resolute encounter cest obiect, que la Royne Eliz. ne sera dit en actuall possession de cest terre per vertue del primer Conquest, si ne appiert per aucun Record que le primer Conqueror ad seisse cest terre al temps del Conquest, & approprie ceo particulierment a luy mesme, come parcel de ses proper demesnes.

Car les Royes D'ngleterre ont toutzsoits claime & eu deins lour Dominions, vn Monarchy Royall, & nemis vn Monarchy Seigniorall ou Tiranny. Et desouth vn Monarchy Royall les subiects sont Franck-homes, & ont property en lour biens, & Franckement & enheritance en lour terres : mes desouth vn Monarchy Seigniorall ou Tiranny, ils sont tous come villeins ou esclaves, & proprietors de rien forsque a volunt de leur Grand Seignior ou Tyrant, come en Turkey & Moscouy. Et p ceo quant tel Monarch Royall que boet gouverner les subiects per vn iust & postime ley, ad fait nouell Conquest de vn Realme, comment que ipso facto il ad le Seignior p paramount de tous les terres deins tel Realme, tllint que tous les terres sont tenus de luy mediate vel immediate, & il ad aussi le posselliion de tous les terres queur il boet actualment seiser, & retainer en ses proper maines, pur son profit ou pleasure.

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¶ poët auxy per ses graunts distributer tel portions que luy plerra, a les seruiteurs & gens de guerre, ou al tiels colonies queux il boile planter immediatement sur le Conquest : come les auntient Romaines, sur lour conquests, ont vse de appropiate le septiesme part del territoz conquered pur plantation de lour colonies : & les Vandals in Italy prisoent le tierce part : vnozre Sir Iames Ley chiefe Justice disoit , que si tel Conquerour receiuë ascun de les natuës ou antient enhabitants en son protection, & auow eux pur ses subiects, & permit eux de continuer lour possesions, & de mourir en son Peace & Allegiance, q lour heirs serront adiudice eins p bone title sans grant ou confirmation del Conqueror, & enioyeront lour terres solonque les rules de la ley, que le Conqueror al allow, ou establish : silz violent submitter eux mesmes a la ley que est allow ou establish p le Conqueror, & tener lour tres accordat al rules de ceo, & n'ay auterint. Et sur cest reason, ou William le conquerour ad grant al Warren un Norman de principall qualite, le castle de Shirbourne in Norfolk, le heire de Shirbourne le antient enheritor de cest castle, monstre al Conqueror, que il fuit son subiect & liege home, & enheritoit le dit castle p mesme la ley que le Conqueror ad allow & establish en Engle terre, & p ceo pria, que il poët tener le dit castle en peace : le Conqueror, en cest case dona Judgement p Shirbourne encounter Warren, de quel Judgement Camden fait mention en le descriptio de Northfolk, & Calthrop Justice disoit que il ad bieu un authentique copy de cest Judgement en le Library de Sir Christopher Heydon al Baconshorp en Northfolk.

Car reuera le Norman Conquerour (coment que il se soit plus absolute & entre Conquest D'engleterre , que Henr. 2. fesoit de Ireland) vnozre il ne seissit tout, ne auoit le actuall possession de tous les terres deins le Realme D'engleterre vell en luy per le Conquest, mes le contrarie appiert per le liuer de Domesday , que est exact descriptio de tout le Realme, fait en temps de cest Roy. Car per cest record est manifest, que le Conquerour auoit certaine terres en demesme, viz. les terres queus fueront en la Main de Saint Edward & sont la entitle, Terra Edwardi Regis

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Regis, & auts fr̄s, qur il m ad leisie sur le conqst, & sont en-
title Terra Regis sans plus, come ē note en 49.E.3.23.2.
Et ceus fr̄s sont ore appellez antient demesnes del roy,
ou le antient demesns de la corzone D'engleterre, F.N.B.14.
Mes en cē liuer les possessions des auts fr̄s sont exp̄res
& mise en certain, cybien que les possessions del roy, & cest
terres qur sont desouth autres titles, come Terra Episcopi
de Excester, &c. Et toutes auts terres queux fueront en au-
ter maine, & nosmes en cest liuer, sont frankee, 40. Ed. 3.
45. Flitz. N.B. 16.D.

Et pur ceo Bodin ne fuit bien informe, quaunt il escrit,
libr. 6. de Republ. cap. 2. que Guiliaume le Conquerant apres
auoir conqueste la Roialme de Angleterre, declaira tout le pais
en general, & les heritages de chascun en particulier, aluy ac-
quis, & confisques per droit de guerre, traitant les Anglois
come ses Fermiers, &c.

Et issint est Renatus Choppinus deceive en son liuer de
Domanio Francie ou il parlant de moderation vse p leg an-
tient Ramang, & Lombards en lour coconqst, Quanto ini-
quiis dit il Willielmus ille Britanicus, lata lege Agraria, se
omnium possessionum Dominum iactabat, vt non modo pri-
uatorum bona cencerentur, sed quicunque in futurum posside-
ret, graue annū vestigal quasi nudus fracturis exoluiceret, vt
a Polidoro traditum est. Mes nostre rerord de Domesday
est, en cest point, de melieur credit, que toutes les fozein dis-
courses ou Chenciles de mounde.

Auxy le Roy Edw. 1. fesoit un conquest de Dominion de
Wales, & chaungeoit lour leyes & customes, come il ad
expresse en son Charter ou statute de Ruthland, ou il dit,
Domina prouidentia terram Walliae cum incolis suis prius no-
bis jure feodali subiectam, in proprietatis nostre Dominium
totaliter & cum integritate conuertit, & Corona Regni no-
stra annexit, & quant a lour leyes & customes il dit, quaf-
dam illarum de consilio procerū regni nostri deleuimus, quaf-
dam permisimus, quafdam correxiimus, ac etiam qualidā alias
adisciendas & faciendas decreuimus, &c. Comment que cest
Roy ad donques gaine le property de cest Dominion, is-
sint que les inhabitants de ceo oumt submitte eux mesmes
a son volunt de Alto & Basso, come est recite en mesme le
charter

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Charter, vineye il appiert, que il admist ceux queut voleant
etre tenuz & gouerne per le common ley D'engleterre, que
il ad establish enter eux per mesme le charter, de auer trans-
femmet & enheritance en lour terres : cat la il prescrive de
forme de brieve de assise de nouvel disseisin, de Mordancester,
& de Dower, destre port de terres en wales solonque le
course del common ley D'engleterre, Vide Bulkleyes Case
Plew. Comment. 1.25.

Cest casse dependoit en Bank le roy per le space de 3. ou 4. ans, & fuit argu plusor's foits, & les Justices al seueral temps, ont deliuier lour opinions en les seueral points auantdit. Mes apres, Sic Humfrey Winch esteant cheste Justice, les parties, oue conge del court, descendoient al agreeint, per que reasonable division fuit faire de cest territoire enter eux, en quel deuision le castle & terre en question, enter auters, fuit allot al Chair O' Callaghan le defendant. Et oze, preter lour mutual assurances, ils ont obtaine seuerall graunts del Roy per vertue de commission pur strengthening de defective titles. Et issint ces countez du bien settle. Bolton Ro condet de Dublin & lo. Meade succento a conseil oue le plaigne, ale Attorney generall oue le defendant.



Pascha

Paschæ s. Iacobi.

En banke le Roy.

Le cas del Deane & Chap. de Fernes, siue, Del Capitulariter Congregatis.

N E le que furent firmes par Richard Pemmet en plainte vers John Allen de la
fondation d'auant le rogne d'Eliz. anno 20. de la reigne d'Eliz.
fuit tel.

Le Deany d'Fernes que est Donative
per le roy, & nemp Elestue, esteant boid,
la roigne Eliz. anno 20. de la reigne d'Eliz.
Cest Deany per letters patentz al Walter Turnor
clerke, sans limitation del aucun estate pur vie, ou autre-
ment.

Apres Turnor est deprivee per sentence del Hugh Allen
adonques Evesque de Fernes, pur cest cause, viz. pur ceo
que le dit Turnor fuit meere lay home & nient capable d' tel
dignite.

Apres ceo la Roigne Eliz. anno 26. de la reigne, done &
grant mesme le Deany al Ivn Campion durant son vie.
Puis, le dit Evesque de Fernes fust lease del Mannor de
Fiddert en le county de Duxford esteant parcel del tem-
porall possessions del dit Evesquerie, al John Allen le De-
fendant: quel lease fuit confirme per le Deane & Chapter
de Fernes, en cest mannor, viz. le Chapter adonques con-
sistoit de 11. persons en number, viz. le Deane & 10. pre-
bends

siue, De Capitulariter Congregatis.

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bends. Turnor & Campion esteant ambideux en pleine vie, Campion fist un Gray, esteant en meere lay home, son proctor ou substitute p' doner son assent al tout g lease g & grāt g, &c. Cest proctor & z. des Prebends tan ū conuenont ensemble, & fixont le Chapter seale al confirmation de cest lease, quel confirmation fuit fait en le nosme del Deane & chapter. Apres ceo, 3. autres des prebends al several iourz chescun aperluy, subscribont lour nosmes al dit confirmation. Puis, le Evesque que fesoit le lease moysiſt, & Thomas Ram est fait Evesque de Fernes, que enter sur le Def. & fait leag al plaintife. Et si le p̄mier leag fait al Defendant soit bien confirme p' le Deane & chapter, ou soit vōide pur fault de bone confirmation, fuit le question. Et fuit adiudicé que le leag fuit vōide apres le mort del Evesque q' fesoit ceo, pur fault d' bone confirmation del Deane & chapter.

Et en cest case 3. points fueront moue & debate.

1 Si le donation del Deanry fait p' la Roynne Eliz. al Turnor sans limitation del aucun estate, soit vōide, ou quel estate il auera.

2 Admit, q' le Deanry soit bien grant al Turnor sans limitation del estate, si le sentence d' depriuation fait luy nul Dean issint q' le Deanry esteant vōide p' ceo, le donation fuit al Campion serroit bone.

3 Admit, q' Campion fuit loial deane al temps del confirmation fait, si le Deane & le greindre part del chapter ont vieu & confirme cest leag, ou nemoy.

Et p̄mierment fuit object p' le counsell del defendant, que le grāt d' le Deanry p' la roigne Eliz. al Turnor sans limitation del estate, fuit vōide tout oustermet pur le incertainty del grant : car le intent de la roigne n'es expres en certaine, sil auera le Deanry p' vie, a volunt, ou autrement. Come si roy grant terre al I.S. habendum a luy & ses heires in ales, sans dire, de son corps, le habendū ou limitation de le estate en ce grant esteant vōide pur le incertainty, tout le grant est tenus vōide a tout g entent g, issint que le grantee ne sera tenant a volunt le roy, Alton Woods case in le 1. part des Reportz de le seignior Coke, fol. 43.b. & 49.a. 18. H. 8. B. Patents 104. le seignior Louels case.

D

Mes

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Mes admit que le grant ne fuit ousterment void, le meilleur estate que passa per ceo, fuit lorsque a volunt del roine, come appiert per le livre de 17. Ed. 3. fol. 45. q est authority direct en le point. Car la, scil facias fuit port vers un deane del frank chappel del roy, de auer execution del annuitie recouer vers son predecessor: Thorp, nous vous diomus q le roy per son charter, que cy est, a nous dona le Deanie, & en la charter nest pas termine, comment, & come longerit a tener, issint que ceo ne poet estre entend lorsque a volunt le roy: Judgement, si le brieve gise vers nous, R. Th. il ne clame nul estate en certainty, & ne dit pas cause pur que le brieve ne gierroit vers lui, judgement, & priomus execution, Tho. Si autre person face tel fait, & done en non certaine, certum est que fanketenemt passa, mes quant al roy, il nest pas issint, car si il done terre ou tenement per le manger il nauera lorsque a volunt.

Accordant a cest opinion de Thorp, fuit tenuis pur ley in Camera Stellarata 1. Mar. Dier 100.a. que si la roigne per sa charter grant terre probis hominibus villa de Islington, sans dire, habendum, eis hereditibus vel successoribus suis, rendant rent que ceo est bone corporation a cest entent, mes que ils ne sont lorsque tenants a volunt del terre, Vide 5. E. 4. 8.b. le case del Garter roy des Heraulds, ou cest office fuit grant al un sans limitation d'estate, & est tenuis que il fuit officer a volunt del roy.

Donques si Turnor fuit Deane lorsque a volunt del roigne, el ad determina la volunt, p la second grant fait al Champion, p ceo que cest second graunt fuit a commencer in presenti: & ne besoigne de signifier le determination de la volunt p expresse parols, come est tenuis, 1. & 2. P. & M. Dier 107. in le case del Almoner, & en le case de Alton Woods cite devant fol. 30.a. Et ceo appiert auxy per le judgement del Parliament en le Act de 6. H. 8. cap. 15. que prouide, que le second patent recitera le primer patent fait per la Roigne durante beneplacito, autrement le primer ne serroit void, come fuit per la ley de vingt le selsans del dit act. Mes cest Act nest en force icy.

Second-

Secondement, fuit obiect, que admis que le graunt fait al Turnor serroit bone durât son vie, vnoce il fuit deprive p le sentence del Evesque, pur q le Deancy deueignoit void devant le second grant fait al Campion : q il sentence de deprivation, comt, que le Deancy soit Donatiue p letters patent's del roy, nest void, mes estoit en force tanque soit reuers p appeal. Car vn Deancy est spiritual dignity, come est tenus en Goodmans case, 10. Eliz. Dier 273. Et le Evesque p common entendint ad Ordinary jurisdiction sra toutes Ecclesiastical causes deins son Diocesse, & comt q il ad commit contempt en visiting le Donatiue del roy, & en donnant le sentence del deprivation, come Barlow Evesq de Bath encuroit le penalty de præmunire en tel case. Brooke Præmunire 21. Vnoce la sentence nest void. Et a cest entent est le difference prise p Parming 13. Ass. p. 2. que si home ad nosme de dignity, & soit ouste p celuy, que ad coulour de luy ouster de sa dignity, come per Ordinary, mesqz ceo soit p deprivation nient due, la il coulent fuer de auer restitution de sa dignity, devant que il poet fuer p cest nosme, aliter est il soit ouste per auter. Et accordant a ceo, est le opinion de Herle & Scroope 8. Ass. p. 21. vide auxy case de Vere & Ieffreyes en le 5. part des Reports de le Seignior Coke fol. 30. a.

Tercement fuit obiect, que le confirmation fait en tel manner come est trouve per le verdict est assets bons. Car primitivement le Deane poet bien doner son assent, & fixer le seale del Chapter p Proctor ou substitute, & sera cy auayable, come s il ad este personally present. Qui per alium facit, per seipsum facere videtur. Et issint les Barons en Parliament donont lour assent p lour Proxies. Et comment que cest very point soit fait vn question 3. & 4. Philip. & Mar. Dier 145. b. ou Evesque ad graunt fee farme de terre que il en droit de son Evesquery, & confirmation fuit fait per Decanum & Capitulum, abiente Decano in remoris, sed presente Presidente Decani, quia per simplex verbum Decanus constituit suum locum tenentes, & tradidit ei claves suas, vna cum voce & autoritate Decani, & hoc intratur in registro iuxta antiquam consuetudinem. Hile Successor poet auoider cest graunt, fuit mouz coram iusticiariis

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eiarijs, &c. Coment que lour resolution en cest point ne appiert, vnoz appiert que fuit un auntient custome que le Deane puissoit faire vn substitute en teli casz, & si tel custome ad estre vle, les actz fait per tel substitute seront bone & auailable en ley, pur le reason mise en le case de Corporations, en le 4. part des Reports de le seignior Coke fol. 77.b.

Auxy le confirmation est assz bone, coment que les particular prebends, queux fesoient le greinder part del chapter, ont done lour assents al seuerall tourz. Car sicome en fesans de lour common actz ils ne sont lies al aucun lieu certaine, come a lour Chapter house, car chescun lieu en queux ils voilont assembler pur faire lour common actz, est bone Chapter-house, 21. Ed. 26. 9. Ed. 4. 39. 14. Henr. 6. 16. Illint ils ne sont lies al aucun temps certaine pur doner lour consents. Mes si lour consent appiert y tel demonstration que la ley require, cest sufficient. Et quel demonstration est ceo & certes, le fixing de lour Common Seale, 14. H. 6. 17. 2. car la est dit, que le fixing du Seale monstre lour agreeement, & la Paston dit, comment poet lour assent estre mieux proue, que y le enseauer de lour common seale, Vide 4. E. 2. firz. Obligation 16. Et comest que ils expressent lour assents al seuerall tourz, y parol, ou signature, vnc le fixing del seale vntie les seuerall assents, & fait vn ioynt assent de toutz.

Et le fait de vn Corporation ne besoigne delivery, come le fait de vn natural person, mes le apposition del common seale, done perfection a ceo solement. Auxy en plusors casz assent apres vn act fait donnera force a ceo, come Atturament done force al grant de reversion fait devant, & si disseisin soit fait al vle de I.S. so agreeement apres, faira luy dissesin, sicome il ad estre present al temps del committing de ledisselin, 37. Ass. p. 8. 38. Ass. p. 9.

Mes de autre part, fuit respond per le Counsell del plaintiff, & resolute per le court, p'merment, que le done ou graunt de le Deancy de Fernes fait per la roigne Eliz. al Turnor sans limitation de aucun estate en ceo, fuit bone, & que il ad cy large estate en cest Deancy per cest graunt, come aucun Deane que est Electue poet auer

auer en son Deany que il ad per election.

Et pur clearing de cest point , diuersites fueront pris: vn surdont sur le difference des Persons queux sont grauntes, auter, hors del diuers quality dez choses grantes, & le tierce del different capacities en queux lez grauntes poent prendre les choses.

<sup>MS. A. 1. fol. 12 verso et linea
natura. 12. 2. fol. 969?</sup>
1 Pur le primer difference : si common person graunt rent, ou auter chose que gisit en graunt tantum, sans limitation del aucun estate, per delivery del fait tantum franchement passa .7. Edw. 3. 45. a. Et le reason est, pur ceo que le graunt del common person sera pris plus fort envers le graunter .7. Ass. p. 1. Mes si le Roy graunt Rent ou terre sans limitation del aucun estate, le graunt est meerelement void pur le incerteinty, & le grantee ne sera tenant a volunt al Roy, come est rule en le Case de Altonwoods cite deuant : a la reason est, pur ceo que le graunt del Roy sera pris plus fort pur son benefit & aduantage, & si poet estre pris a double entent : sera adiudge void pur le doubtfullnesse de ceo. Et cest diuersity surd sur le difference des persons queux sont grantes.

2 Le difference que result hors de diuers quality des choses grauntees, est tiel.

Si le chose grant soit de tel nature, tllint que diuers estates poent estre limite de ceo, come de terr, Seigniorie, rent, & huiusmodi, si le Roy en son graunt de tel chose nolimite aucun certeine estate al grantee, rien passera per cest graunt, mes sera adiudge meerelement void pur le incerteinty, come est monstre deuant: Mes si le chose granted soit tel dont diuers estates ne poet estre limitees, mes vn estate tantum est incident a ceo, que la ley limit, sans aucun limitation fait per le grauntor. De tel chose le graunt del Roy ne poet estre doubtfull, ou incerteine, le Roy ne poet estre deceau, ne poet erre, car Error est in binio, & nul error poet estre, ou est forsque vn boy desir pris.

Mes quel chose est ceo a que vn estate tantum est incident per la ley, & de que diuers estates ne poet estre limitees. Certes, ceo est vn office. Mes quel office? Certes, tel office, que per la ley courre en perpetuall succession, & nemoy en course de discent, & dont le officier est touys fois

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corps politique : et de cest nature, sont tous offices Ecclesiastical, Grendons calc, Plow. Comment. 497. a. Car d diuers secular offices seuerall estates poent estre limit, come d' offices d Constabl, Dengleff, Marshal, Viscont, Gardien del Fleet, &c. queux poent estre grant en fee, en tayle p vie, ou a volunt. Et la reason est, p q tiez temporale officiers ont lour offices en lour natural capacities, & l Roy en politie poet suppremer, & reuiner ceux offices pro loco & tempore, & p consequence poet limit tempozacie estates en ceux.

Mes Ecclesiastical offices come Evesquery, Deantie, Rectory, qui sont institute p le gouernement d la Sainte Eglise, besoigne destre continue in course d ppetual successiōn, vsque ad finem seculi : Et p c nul home poet pnd tel office en son natural capacity, mes chescun tel Ecclesiastical offici est corps politique ipso facto, come Person est incorporate p l commun ley, 40. Edw. 2. 27. Et issint Evesque, et Dean, &c. & tous ceux ont lour offices en politique capacity, & en course d succession, & ceux sont les offices dōt la Ley btmn vn estat etat, & dont diffulty des estates ne poet estre limit.

3. Et issint le tierce difference appert, viz. ceo que furent hors del diuers capacities des Grantees. Car Grauntee del temporall office, come del office de Constable ou Marshall, poet prendre ceo en son natural capacity, & son heire poet prendre ceo en course d discent, si estate d'inheritance soit limit d ceo. mes Grauntee d spiritual office, viz. d Evesquery, ou Dancy, &c. ne poet c pnd en natural capacity, si en course d discent, mes en politique capacity, & en course d succession seulement, car autre estate il ne poet auer en ceo, ne autre estate poet estre limit de ceo. Evesque ne poet auer estat a volunt, pur ans, ou pur vie, ou en tayle en son Evesquery, ne Deane poet auer aucun titel particuliar estate en son Deancy, mes ils ont estate en fee al meins : mes ceo nest a eux & lour heires, mes seulement a eux & lour successors.

Pur cest reason, quant le Roy graunt & done Evesque (car toutes Evesqueries en cest Realme sont done et graunt p Letters Patents p l'Estatute de 2. Eliz. cap. 14.) ne besoign aucun limitation del estate en la donation, nient plus

plus que en le inuesture, per Annulum & Baculum fait ples
antient Rôyes D'englet duant le Norman Conquest, et
apès. Car le Roy Iohn fut le primer Roy q̄ p son chart dat
15. January anno 16, d̄ son raigne grauntoit power & li-
bertie al tous esglises cathedraill & conuentuall in En-
gleſſ d̄ faire canonical election d̄ leur Prelatz, petira prius d̄
luy ses hēs & successozs licentia eligendi, sc. q̄l chēe ē troue
en Math. Par. Hist. mag. fol. 253.

Mes ou le Roy a cest iour en cest Realme, done et grant
Euesq̄ry on Deany p ses letz patentz, ladē besoign astū
limitation d̄ l'estat, car la ley ad limit l'estate duant, come en
assignement d̄ Dower al widow del Roy, nul estate est limit, N. Br. 263. c. Car la Ley create sa estate deuant. Illint
sur Presentation, Institution ou Induction del pson al
Rectorie est nul limitation del estate que le pson aua en le
Rectory, vnoore la ley doſt a luy fee in iure Ecclesiæ.

Et s'come en grant del Deany fait p le Roy ne besoign
dauer aucun limitation del estate, illint si particular estate
serroit limit, come pur bie, ou pur ans, ceo serroit repug-
nant et contradictoire al Grant. Car le Dean ne poet p̄-
uder le Deany mes a luy & les successozs que est estate en
fee, & p ceo teli limitation serroit boyd. Come si leostment
soit fait al I.S. a ses heiez, habendum pur bie, cest haben-
dum est boyd, car est contrarie a les premissez, 11. Henr. 8. Br. Estates 50. Vide 11. Henr. 7. 12. 2. Si Terf soit
grant al Major & commonaltie sans plus dire ilz auroit
fee simple.

Auxy Deany que est donatiue ne poet estre graunt pur
ans, ou a volunt tantum p reason d̄ un graund inconveni-
ence que insueroit. Car le frankteneshit des Terres q̄ux
le Deane ad en droit del Deany tantum frot p cest mean
en perpetuall abetiance quel inconveniencie la Ley ne soet
suffer.

Auxy Deany ou Evesq̄rie ne poet estre grant p bie tan-
tum, p aut inconveniencie, car Deane ou Evesq̄ poēt au bie
d̄ droit. Lit. 143. b. q̄l bie ne poet estre port p cest q̄ ad estat
froloz p bie, & p tel mean l'eglise frot d'abstinenſie, & sans
remedy, q̄ la ley ne poet ymitt,

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2 **Q**uant al second obiection, viz. Que Turnor fuit depriue p sentence del Euesqz, q̄l sentence ne fuit vnq̄s reuerte p Appela, et issint le Deancy fuit void, quant le grant fuit fait al Campion, p q̄ Campion fuit totali Deane, quaunt le lease en q̄stion fuyt consteme, fuit fortement argue p le Councell del Plain-tife, que le sentence de depriuation fuit tout ousterint void, & que Turnor remainoit Deane nient obstant cest Sentence.

Car cest Deancy est donatiue p Letters Patents d̄l rov, nient visitable p l Euesqz, & p consequence hors d̄ son Jurisdiction, & issint le sentence del deprivation est void, esteant Coram non Iudice. Come Judgnt d Franck see en court de antient Deneslie, 11. Henr. 4. 17. Judgnt done en le Marshallie sur contract fait hors del Vierge, & ou nul des parties est del hostell del Roy, & Judgnt en le court d̄ Admirtaltie, De re facta in corpore Comitatus, 19. Ed. 4. 8. 20. Edw. 4. 15. Et Judgnt done en le common Bank sur appale d Murther port la 22. Edw. 4. 33. tielz Judgments sont void ou les Judges nom Jurisdiction in tielz causes: p q̄ cest sentence fuit void en cest casse icp, p c̄ q̄ c̄ Deancie esteant un Donatiue d̄l Roy est exempt & hors d̄l jurisdiction del Euesque.

Car l Ordinary nad rien a Medler ou un Donatiue que doet passer per done de la Parson sang institution ou induction come est dit, 2. Assisar. pl 31. Et q̄ ls Donatiues del Roy sont hors del Jurisdiction del Ordinary, & nient visitable p lui. Vide 20. Edw. 3. Fitz. Excomm. 9. 16. Ed. 3. Fitz. Briet. 660. 21. Edw. 3. 60. 6. Henr. 7. 14. Cawdreyes Case, en le 5 part des Reports de le Seignior Coke, fol. 15. a. Mes le visitation de tous Donatiues del Roy appert proprie al Seignour Chauncellor del Realme, N. Br. 4. 2. ou auant le Roy poer faire speciall Commission a ce purpose, 6. Henr. 4. 14. & Goodmans Case, 10. Elizab. Dier 27. ou l Evesque d Bath & Wells ad especiall Commission aganta lui p l Roy Edw. 3. de visiter le Deane & Chapter de Wells, p force de quel auctorite Goodman fuit destitue. Mes en cest casse l Evesque de Fernes ad mil Commission de visiter le Deane, & pur ceo coment que il ad com-

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mit contempt enuers le roigne, pur que il fuit punisshable,
vncoze esteant vn nullity en le sentence de Depriuation, ceo
ne greeuera le Deane, nient plus que vn Judgement al
common ley esteant done Coram non Iudicis greeuera le
partie vers que tiel judgement est done. Et le reason del
judgement en Vere & Ieffryes case semble destre vn rule de
cest point. Car la est tenus, que si Ordinarie de vn Dio-
cesse committe administration de biens de vn intestate que
ad bona notabilia en diuers Dioceses, tiel administration
est meerement boyde, cibien quant al biens deins son
Diocesse, com alioz: pur ceo que per nul meane il poet a-
uer iurisdiction del cause. Illint en cest case le sentence de
Depriuation est meerement void, pur ceo q le Euesque come
ordinary poet p nul mean auer iurisdiction sur le donatiue
del roy, que est exempt de son iurisdiction tout ousterment
per la ley.

Mes quant a cest point Ley chiefe Justice hestauit , &
fuit plus tost de opinion q le sentence de Depriuation fuit
effectual en ley tanque fuit reuele p appeale. Et sur Vere
& Ieffryes case il prist difference, entre Ministeriall act & Ju-
diciall act. Committal de administration nest q Ministeriall
act, & p ceo sera void en le case auantdit, mes Depriuation
est judiciall act que ne sera void forsque p auer iudgemēt
surappeale. Auxy ou Firz. N. B. 42. 2. dit q prohibition sera
direct al ordinary q il ne visitera les Donatiues del roy, ceo
proule que le Ecclesiasticall court ad iurisdiction en causes
de mesme le nature, & illint ad colour de proceder al sen-
tence, & si prohibition ne vient devant le sentence, ceo estoie-
ra tanque soit ad nul sur appeal.

MEs quant al tierce point, fuit resolue p tout le courc,
que coment que Turnor ad estre bien deprime, & Cam-
pion ad estre loiall Deane al temps de confirmation
fais vncoze le leas fait al def. ne fuit bien conforme, ne p le
Deane ne p le greinder part del chapter, come devoit estre
per la ley, en tiel case.

Primo nul confirmation fuit fait per le Deane,
Car il ad fait vn Proctor que fuit meerement estranger
al Chapter, & nient capable de tiel procuracion, & pur ceo
tout

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tout que il ad fait ist void, p le rule Cnon ley & per le rule del del Cannon ley. Le rule del Cannon ley en cest case est. Absens non potest demandare votum suum nisi voi de capitulo. Instit. Iuris Can.lib. 1.cap. Electionibus. Et est auter rule. Oportet quod procurator semper institutus sit de collegio. Et auter, Votum dari non potest per literas.

Le rule del common ley est agreeable al Cannon ley en cest point. Car en le hault Court de Parliament, come ad estre dit deuant, les Barons poent doner lour votes per procuracy ou proxie. Mes lour procto^rs couient estre Barons, & members de mesme le meason, car estranger nest capable de tel proxie. Mes ou corporation passera aucun interest, le common ley ne voet suffrir q les members del corporation doneront lour assent p proctors ou substitutes. Et p ceo 11.H.4.fol.64. Sur composition p Dismes, un person grant annuity al Abbe de Battell, quel grant est confirme p Euesque, Deane, & Chapter esteant Patrons. Et il appiere per le fait del confirmation, que le Deane fuit absent, & ne mist le seale a ceo, mes l chantor fuit son commissarie & misoit le Seale p lui. Et la est tenus, que com^et que le Deane poet auer un President ou Commissary, p exerciser son spirituall Jurisdiction, n^ocore tel commissary ne poet charger les possessions del esglise. Et issint le question moue en 3. & 4. Philip. & Mar. Dier 145. Cite deuant, est resolue per le rule de cest lieuer.

Secondm^e, le maior part del chapter nont done lour consent al cest confirmation. Car le entier chap^r consistoit de 11. persons, & 3. de eux tantum que le proctor del deane fueront present quant le seale fuit affix al cest confirmac. Et que le maior part del corporation doent consentir al touts act^s queux iteront le corporation, est manifest aussi per rules le^s del canon & Common ley.

Le rule del canon ley appiert en Panormit. cap. cum in concisis, ou est dit, que Authoritas & potestas capituli consistit in maiori, pars ei^s & saniori, & sic totu^m capitulu facere dicitur, quod facit maior & sanior pars. Et hoc verum est in omnibus actionibus & electionibus, praterquam in electione Romani Pontificis, ubi oportet quod duas partes consentiant.

Le common ley ad mesme le rule 14. Henr. 8. 29. ou est ditz,

D. 20. 21. q. bin post l' d'ans
sont remise. alias pffent.

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dit, que le Deane & le maioz part del Chapter font le corporatior, & lour act est le act del corporation, comment que les autres ne agreeont. Istant 21. Edw. 4. 27. est dit, vbi maior pars ibi tota 15. Edw. 4. 2. a. 9. Henr. 6. 32. a mesme le entent.

Et cest difference fuit prise, viz. que en collegis & corporations le maioz part des members doent doner lour voies in numero distincto : mes en confused & incertaine numbers, come en election de chiualers al Parliament, ou de coroners ou boderors en le county de court, le greind voice ou acclamation est sufficient, pur monstre le assent del greinder part des freeholders queux font le election. Plo. Comment. 126. a. Et sicom le maioz part del Chapter doet consentir en fesans de cest confirmation, & cest consent doet estre expresse p le fixing del Seale, come est tenus 14. H. 6. 17. Istant ils doent ceo faire en vn lieu & al vn temps, car auterment poet estre dit assensus, meg nemy consensus, ou le leas doet estre consieme cum assensu & consensu del deane & chapter. Car sicom vn corps naturall ne poet faire ascens perfect act si soit dismember, viz. si le test soit en lieu, & les maines en autre lieu, & sic de ceteris, istant est de corps politique, les persons queux sont members de ceo doent estre capitulariter congregati en vn lieu certaine, auterment, si ils sont scatter & disperser en seueral lieus, ceo que ils font ne sera dit le act del corporation mes sera dit factum singularium. Et pur c Panormitan. dit, Vniuersitas vel corporatio non dicitur aliquid facere, nisi id sit colligialiter deliberatum, etiam si maior pars id faciat. Vide 15. Ed. 4. 2. a. ou le maioz part des moignes ont subscribe lour nosmes al vn fait del Abbe mes ne fuit expresse que ceo fuit fait oue assent & consent del conent, ceo sera dit destre fait per les particulares persons queux ont subscribe, & nemy per le corporation, & tel fait ne liera le meason.

Ancore fuit agree, come ad estre dit devant, que le deane & chapter ne sont confine a lour chapter-house, mes que ils poent assembler, & faire lour acts alioz. Et pur ceo est tenus 21. Edw. 4. 26. que ou fait port date in domo capitulari, auerment poet estre, que cest fait fuit deliner en autre lieu. Et a cest entent est 27. Ass. p. 23. le case de Priorz Allen,

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Alien. Uncore il content que ils s'assemblont en ascu certain lieu, & que le maioz part soit present en cest lieu quant ils donont lour consent al ascun common Act. Et pur ceo le election des Coroners doet estre fait in pleno comitatu come appiert per le brieve de Coronatore eligendo? Quia nuper vnu coronatorum in comitatu tuo diem clausit extremum, &c. Tibi pricipimus, quod si ita sit, tunc in pleno comitatu tuo de assensu eiusdem comitatus elegi facias, &c. vide Registr 177.a.

Auxy le consent del maioz part del chapter doet estre done al vn temps, simul & semel, & nemy scatteringly, & al feuerall iours. Car nest Consensus si ne soit simul. Car consensus est voluntas multorum ad quos res priuet, simul iuncta. Et pur ceo Panormit.ca .cum in Ecclesia dit, si consentiant ut singuli & non collegialiter, cum actus per communem consensem debeat expediri, non valet. Et en institut. Iuris Canon libri 1. cap. de electionibus est dit en le glosse Electio quae à principio fuit nulla, quia facta a minori parte capituli, non potest conualidari per consensus particulares superuenientes.

Agreeable a ce rule est le reason del case mise en le Doct. & Stud. Br. Judgements 148. que si femme suffre recouery de la ioynture encounter le statut de 11.H.7. sans le assent du testy en reuersion, & apres testy en reuersion releas al recoueroz p fine, cest assent vient trop tard, & ne voet faire le recouery bone, q fuit vn foitg void. Illint en cest case, quant le fait del confirmation ad le chapter Seale stte a ceo, d'ou que ceo fuit void pur fault del consent del maioz part del chapter, & p ceo p le straggling assents de 3. autres prebends done apres, ne sera fait bone, ou fuit void devant.

Et sur cest dectrine point principalment, apres plusors arguments, le court donoit Judgement per le plaintif. Et per ce Judgement l' Evesque de Fernes recoueroit un meslon pur son habitation, ou devant tous les mannoz & mansions del Evesquery esteant alien p ses predecessoires si nauoit, vbi reclinaret caput suum. Le Attorney General, & Bolton Recorder de Dublin fueront a counsell oue le pl, & le Solliciter Generall, & Io. Meade vi Middle Temple oue le defendant,

Hill'

Hillar 3. Jacobi.

Le Resolution des Justices touchant le Irish Custome de Gauelkind.

Premièrement est a sauoir, que les terres possesse per les meete Irish deins cest realme, furent d'inde en severall territories ou countries : & les inhabitaans de chescun Irish country, furent bandis en severall depts ou linges. Secondeint, on chescu Irish territory fut un Seignior ou chiesetaine, & un Tanist que fut le successeur appacant. Et de chescu Irish Seignior limage fut mary au chieff, qui fut appell Canfinny, ou caput cognacionis. Tierrement, tous les possessions deins tout Irish territorie (deuant que le comon ley d'engleterre fut establee) tout le roialme, ebe ore est) augeant toutz ditz, ou en course de Tanistry, ou en course de Gauelkind. Chescun seignior ou chieff aye le portion de terre que passoit une ceo, a loit sans priction al Tanist, que tenuxtoit & regnoit cinq per election, ou fort maist, & nommy que disent. Des toutz ditz territorios, Teneueleg furent partis entre les males, & en Gauelkind.

Uncore le estate que le seignior auoit en le chieff, ou qd les inferiorterans auoient en Gauelkind, ne fuit estate de inheritance, ne s'auoit temporaire, ou transitorie possession. Cest ferme le prochain herit del seignior ou chiesetaine, ne enheriteroit le chieff, nusq; le plus eigne & plus digne de Seignior.

Le Irish Custome.

(comme est monstre devant en le cas de Tanistry) que souuent faites faitz enques a appeler un autre que fait plus accoustumé soit que lui? Il sunt les freres de nature de Gauelkind ne pouvant partible entre les prochain hōtres males del estat que morozt le Isle, mes entre tous les males de son Sepr, en telle manner.

Le Canfinny ou cheife de Sepr (que fait communement le plus antient del Sepr) estoit tous les partitions par son discretion. Cest Canfinny appres le mort de chescun tenenant que auoit competent portion de terre, assemblloit tout le Sepr, & ayant mise tous leur possessions en Horchpotch feisoit nouel partition de tout: En quel partition il ne assignoit a les fils de cestu que morozt, la portion que leur pere auoit, mes il allottroit al chescun del Sepr, solonque son antiquity, le meilleur ou greindre parparty.

Ces portions ou parparties il sunt estrange allotte & assigne, fueront possesse par enoy accordant, tanques nouel partition fuit fait, que al discretion du volont del Canfinny puissait estre fait sur le mort del chescun infecius tenant. Et il sunt per reason de ceulz fréquent partitions & remembraances ou translations des tenantes del hu poist al autre, toutes les possessions fueront incertaine, & le incertainety des possessions fuit la very cause que nul civil habitans fueront exced, nul enclosure ou improuement fuit fait des terres, en les Irish countries ou cest custome de Gauelkind fuit en Isle, speciallement en Ulster, que fumbloit per tout destre bur holdernesse devant cest nouel plantation fait par les English undertakers. Et ceo fuit le fuit de cest Irish Gauelkind.

Il sunt par cest Irish custome de Gauelkind les Bastards auoient leur parparties que les legitime, les simes furent tout duuestre excluse de Dower, & les filles ne furent inheritable, comment que leur pere morozt sans fille male. Il sunt que cest custome differoit del custome de Gauelkind en Kent en 4. points.

Cest 1. p le custome de Kent le terre del nature & tenures de Gauelkind est partible entre les prochain hōtres males, & tels coparteneurs appeler partition auont certaine estate de enher itance en leur parparties.

a Les

Les bastards ne sont admit denherit ouerlent amesqz
les statut legitimate.

La femme de chesc tertenant en Gauelkind e^t endoim-
able del moitie.

4 Pur default des maleg l's h^rs females inheriterot.
Vide Lamb. in le Recamb. de Kent. fol. 570.

Et p^r ceo cest custome de Gauelkind vse in Kent ad estre
touttois allow & approuve pur bone & loiall custome p^r la
ley Dengletere.

Des c^e Irish custome de Gauelkind fuit agreeable en
plusouys de ceur pointz al custome de Gauelkind que fuit
en vse en North Gales : qⁱ custome fuit reponne & reforme
per le statute de Rutland fait 12. Ed. 1. Cat la est dit, Quia
haec tenus mulieres non extiterant dotatiz in Wallia, Rex con-
cedit quod dotentur. Et appes c^e est dit, qⁱ aliter visitatu est in
Wallia, quam in Anglia, quoad successionem hereditatis, eo q^d
hæreditas partibilis est inter hæredes masculos, & a tempore
cuius non extiterit memoria, partibilis exxitit : Dominus Rex
non vult, quod consuetudo illa penitus abrogetur, sed q^d hæ-
redates remaneant partibiles inter consimiles hæredes, sicut esse
consueuerunt, hoc excepto, quod bastardi non habeant de ca-
tero hæreditates, ac etiam quod non habeant propentes cum
legitimis, nec sine legitimis. Et si forte hæreditas aliqua ex-
tunc, pro defectu hæredis masculi, descendat ad legitimas mu-
lieres hæredes ultimi antecessoris sui inde seisiti, volumus de
gratia nostra speciali quod codem modo mulieres legiti-
mæ habeant propentes suas sibi inde in Curia nostra assignan-
das : licet hoc sit contra consuetudinem Wallensicam ante
visitatam. Vide le statute de 34.H.8.cap.28. Rastal Wales 32.
ou le custome de Gauelkind en Wales est tout ousterment
abolish. oue divers auters usages semblable al autres cu-
stomes des Irish.

Pur ceux reasons, & pur c^e que tous les dits Irish cou-
tries, & les inhabitants d'yeux de hoys en auant fueront
destre gouverne per les rules de la common ley Dengletere,
fuit resolue & declare p^r tous les Justices, que le dit Irish
custome de Gauelkind fuit void en ley, non soleint pur len-
conuenience & unreasonableness de ceo, mes pur ceo qⁱ fuit
vn meere personal custome & ne puissoit alter le discent de
inheritance.

Le Irish Custome.

Et pur ceo tous les terres en eux Irish countries seront oze adiudge de discender accordant al courre de common ley, & que les femez serront endow, & les illes seront enheritables de ceux terres, nient obstant cest Irish usage ou custome.

Et ou les femez des Irish seigniorz ou chieftaines, clament de auer sole propertie en certaine portion de biens durant le couverture, oue power de disposer tiels biens sanz le assent de lour Barons. Fuit resolue & declare per tous les Justices, que le propertie de tiels biens serroit adiudge destre en les barons, & nemy en les femez couert, come la common ley est en tel cas.

Cest resolution des Justices, p le special ordre de seignior Deputy, fuit register enter les actes del Counsel : mesme la cest prouision fuit ad a ceo, q si aucun de les meere Irish ad possesse & enioy aucun portion de terre p cest custome de Irish Gauelk ind, devant le commencement del Raigne de nostre seignior le Roy que oze est, que il ne serroit disturbe en son possession, mesme serroit continue & establish en ceo. Mesme que apres le commencement de la Majesties raigne tous tiels terres serront adiudge de discender a les heires per la common ley, & serront adiudge de hors en ayant possesse & enioy accordant.

Mich'

Mich. 9. Iacobi.

En le Court de Castle-chamber.

Le course del Trial de Legitima- tion & Bastardy.

VN information fuit exhibit en le Castle-chamber entrez le evesque de K. & C.B. et autres, queux per practise et combinaison entre eux, et y vndue course de proceeding, ont endemour de prouer le dit C.B. que fuit tout temps devant reputed un bastard, destre le legitimat fiz, et hfe de G.B. esquise, al deherison, et defamation del E.B. que fuit la sole fille et hfe del dit G.B. Et sur le Dier de ce cause, le case appieroit destre tel.

Environ 26. ans devant le bell exhibit, le dit G.B. ad fist le dit C.B. sur le corps dum Herois Damosel, la quel durant la vie de G.B. ne fuit reputee la femme, mes la concubine : a le dit C.B. pur tout le temps auantudit, fuit soleillement accept pur le natural fiz de G.B. Mes nemy pur legitimate.

Apres ceo, viz. 16. ans depuis la naissance de C.B. sa mere estant en pleine vie, G.B. pris al feme un Dame de bonne estate & reputation, ou le assent de ses Amies & ad fist per luy la dit E.B. s'morust. Apres la mort del dit G.B. C.B. son reputed fiz, ne la mere, qui est uncoze

Le course del triall de Legit. & Bastardie.

in vie, ne plont riens p le space de 9, ans, mesme ore tard, s'ils ont practise & combine oue le dit evesque d' R. estant de lour consanguinitie, & que plusors auts, de puer le legitimaet del dit C. B. p un irregular, et vndeue course, al entent d' bastardise & dislinherit le dit E. B.

Accordant a quel practise & combination, leuesque sans aucun fuit commence ou mone en aucun temporall court del Roy, ou aucun brieve direct a lui, de certifier Bastardy ou legitimation en cest case, & que plus est, sans aucun libell exhibit en son ecclesiastical court touchant ce matter, de son teste demesne, priuatement, et nemis conuocatis conuocandis 9. ans apres le mort del dit G. B. pris dispositions & plusors tesmoignes, a puer q le dit G. B. 19. ans devant ad loialment marry, & pris al feme la dit Irois Damosell Mere del dit C. B. Et q le dit C. B. fuit le legitimate fitz & hte del dit G. B. Et ceux depositions issint pises, le dit Evesque causant destre engrossé, & reduce en forme de un solleme act, & ayant mise son signature & seale a cest Instrument, delivrer ceo al C. B. que publis ceo, & p colour de cest Instrument ou Act, declare lui mesme destre le fitz, et hte legitimate del dit G. B. &c. Et p cest practise et misdemeanoir, le dit evesque de R. et autres fueront censure, et sur ceo deux points fueront resolute.

i Coment que tous Matrimoniall causes ont este de long temps determinable en les Ecclesiasticall Courts, et sont ore proprement deins le Jurisdiction et consulans del clergy, vnoze ab initio, non fuit sic. car cibien causes du Matrimony, que causes Testamentary, fueront ciuil causes, et apperteignont al Jurisdiction de ciuil Magistrat, come est bien conus al tous ciuiliangs : tantque les Christian Emperozs et Roys, pur faire honoz al Prelates del clergy, ont grant, ou allow al eux consulans et Jurisdiccons en ceux cases.

Et pur ceo, le Roy D'engleterre, que est, & toutz soirs de droit fuit le fontaine de tout Justice & Jurisdiction en tous causes, cibien Ecclesiastical, que Ciuell, deins les Dominions, coment que il allowe les Prelates del Eglise, de exerciser lour sevral Jurisdiccons en ceux causes, queur proprement apperteignont a lour consulans

Le course del triall de Legit. & Bastardie:

52

Encore per les rules del common ley, il ad superintendencie sur tout procedings sur power de direction, quāt, & conseils procederont, et de restraint, et correction, sils ne procederont duement en plusouys cases : come est manifest per les briefes de senchall natures, direct al Euelques per quem le Roy commaund eux de certifier Bastardy, Excommunicac^e, Profession, accouplement en loyal Matrimony, de admit^r clarks, de cautione admittenda, &c. Et aussi p leg b̄es de Prohibition, Consultation, & Attachement sur Prohibition.

2. Fuit resolute, que le question de Bastardy, ou legitimacy, doent estre pr̄merint moue en le temporall courte del roy, et issue sur ceo doet estre ioyne la : et donques doet estre transmisse al ecclesiastical court, p b̄isē del roy destree examine et trie la : et sur ceo le evesque fera certificate al courte del roy, a quel certificat esteant fait in ciel due mani, la ley done tiel credit, que tout le monde sera lie et estoippe per ceo. Mes de autre part, si aucun suit a prouer Bastardy ou legitimacy soit prouement communice in le ecclesiastical court, devant que ales question soit moue de tiel mat^c en le temporall courte del roy. Prohibition ḡist de restraint tiel suit, et si soit accompagne oue practise et fraud, come en test case, ceo est, un misdeemeanor punishable en le Star-chamber.

A cest purpose, le Case de Corbett fuit mise, 22. Ed. 4. fitz. Consultation 6. Sir Robert Corbett ad issue 2. fitz. Robert & Roger, Robert le fits estreant deins le age de 14. ans, pris al femme Matild, une quel a son pleine age, il co-habit, & cogniti & reputati sunt pro viro & vxor palam. Uncore apres, Robert le fits, demisste de luy la dit Matild, et vivant la dit Matild, espouse un Letrice, et ayant issue per Letrice un fits, morust, apres q̄ mort Letrice preach et declare ouertment, que el fuit la totall femme de Robert, et que son fits fuit mulier et legitimate. Sur que Roger le vuisne fits del Sir Robert Corbett commence suit en le Spiritual court a reuerter les espouselz, en Letrice et Robert, et a metter Letrice al silence, &c. per que Letrice purchase prohibition, et sur ceo Roger monstre tout cest mat^c et pria consultation, que fuit a luy deny, pur cest treason principalment, viz. que l'entent del suit, en le Spiritual court.

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court, fuit de Bastardizer le issue enter Lettice & Robert, et de puer Roger hfe al Robert, et l'action et originali de bastard homme, ne sera prime s moue es le spiritual court, mez in le temporal court, &c. Et s'fait ce point plus cleare, 2. case s mise q Bracton, libr 5. tit de Exceptionibus c. 6. fueré remember.

1. B. ayant issue du corps dun fein inheritter nee huant espouseis, p colour d e cause barf in assise post p ley d's A. il obtaine Bull du Pape, & p authority d e commissis fuit in Ecclesiastical court, & prouer son issue legitimate, quod facere non debuit, tenu Bracton la dit s pur e prohibition fuit grant de statut ce fuit, monstrant tout le mat, & quod predictus B. ad deceptionem curiae nostrae &, ad infirmandum iudicium in curia nostra factu, trahit ipsum A. in placitum coram vobis, in curia Christianitatis, authoritate literarum domini Papæ, ad praed puerum legitimandu, &c. Et cum non possint iudices aliqui de legitimate cognoscere, nisi fuerit loquela prius in curia nostra inceptra per breue, & ibi bastardia obiecta, & postea ad curiam Christianitatis transmissa, vobis prohibemus, quod in placito illo ulterius non procedatis, &c.

2. En mesme le Chapter, Bracton misit l frame dun aux prohibitiō, que fait le difference auant mise, plus evident, Rex talibus iudicibus, &c. Ostensum est nobis ex parte A. qd cum in curia nostra, coram iustitiarijs nostris itenerantibus in tali comitatu, arraniauit quandam Assilam mortis antecessoris versus B. de quadam terra in N. idem B. timens sibi posse opponi notam bastardia in eadema Assisa, & ante predictum aduentum iusticiariorum, & antequam ei bastardia opponatur in Curia nostra in dicta Assisa, & antequam fuerit per nos ordinario loci Inquisitio, de legitimate probanda, secundum regni nostri consuetudinem, demandata, literas domini Papæ ad vos directas impetravit, vt de legitimate sua cognoscatis, & ad probationem illius, testes admittatis, vt p hoc remaneat haereditas & successio contra consuetudinem regni nostri, quæ huc usque obtinuit, ut approbata, & : Sede Apostolica confirmata, qd in causa successionis, & haereditatis petitione, debet prius moueri placitum in curia nostra, & cum ibi obiecta fuerit bastardia, tunc deinde transmitti debet Recordum

cordum loquazie, & cognitio bastardiæ ad Curiam Christianitatis, ut ibi ad mandatum nostrum de legitimate inquiratur, quod quidem in hac parte non est obseruatum, & cum hoc sit manifeste contra consuetudinem regni nostri, quod habita vel habenda inter alios contentione de iure successionis, debiatis ad inquisitionem de legitimitate procedere antequam à nobis hoc fuerit vobis demandatum, vobis prohibemus, &c.

¶ Per que est asset manifest que si le Ecclesiastical court proceed al examination de bastardie ou legitimation, sans direction del temporall court, sera restaine per prohibition, & si soit fraud ou practise en tel proceeding, q' ceo e censurable en le Starchamber, le notable case del Bavington chancelloz de Litchfeld, Trin. 3. Iacobi est direct p̄sident en le point.

3. Sicome le ecclesiastical judge ne poet enquierre d'bastardy ou legitimation sans special direction ou maundement del Roy, il est quaut il ad receve le brieve del Roy pur faire cest inquisition, il ne doet surcease, pur aucun appeale ou inhibition, mes doet tout sfoits proceed tanque il ad certifie la court del Roy: & ceo auxx appiert, en Bratton, libr. 3. cap. de Exceptionibus, 14. Cum autem iudex ecclesiasticus inquisitionem fecerit, non erit ab eo appellandum, nec a petente, nec a tenente: a petente non, quia talem iurisdictionem & talem iudicem elegit, a tenente non, quia sic posset causam in infinitum protrahere de iudice in iudicem, vsque ad Papam & sic posset Papa de laico feodo indirecte cognoscere. Mes cest point est plus manifest, per un notable record compernant un case de cest Realme, in Archiu. Turris claus. 8. H. 3. membr. 29. in dorso, en cest forme. Rex Dublin Archiepiscopo Iustitiario Hyberniae Salutem: ad ea quæ vobis nuper dedimus in mandatis, ut nobis rescribereatis, quatenus fuisset processum in causa Nicholai de la Felds, qui cont̄ Abbatem & Canonicos sancti Thomæ Dubliniensis in Curia nostra, coram Iustitiarijs nostris, petijt duas carucatas terræ cum pertinentijs in Kilredhery, per assisam de morte antecessoris, cui etiam corā eisdem iustitiarijs, obiecta fuit bastardia, per quod ab ipsis iusticiarijs nostris ad vos fuit transmissū ut in foro ecclesiastico de Bastardia siue legitimitat' agnosceretis: nobis p̄ literas vestras significasti, quod cum in foro civili

terrasq;

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terram prædictam peteret per literas nostras de morte antecessoris, versus memoratos Abbatem & Canonicos, obiecta fuit ei nota Bastardiæ, quare in foro eodem tunc non fuit ulterius processum: memoratus etiam Nicholaus de mandoato iustitiariorum nostrorum, in foro Ecclesiastico coram vobis volens probare se esse legitimum, testes produxit, & publicatis attestacionibus suis, post diutinas alterationes & disputaciones, tam ex parte Abbatis, quam ipsius Nicholai, cum ad calculum diffinitiuæ sententij procedere velletis, comparuerunt duæ puellæ minoris ætatis, filiæ Richardi dela Felda Patris prædicti Nicholai, & appellauerunt ne ad sententiam ferendam procederetis, quia in hoc manifestum earum verteretur præjudicium, eo quod alias præcluderet eis via petendi hæreditatem petitam, nec possit eis subueniri per restitucionem in integrum. Vnde de consilio virorum prudentium (ut dicitis) appello deferentes, causam secundum quod coram nobis agitata est, domino Papæ transmisitis instruam, de quo plurimum admirantes non immerito mouemur, cum de legitimate prædicti Nicholai per testium productiones & attestacionum publicationes plene vobis constituerit, vos propter appellationem puellarum prædictarum, contra quas non agebatur, vel etiam de quibus nulla siebat mentio in Assisa memorata, nec fuerunt aliquæ partes illarum in causa prædicta, sententiam diffinitiuanam, pro eo distulistiis pronuntiare, & male, quia nostrum declinantes examen, id quod per nostram determinandum esset iurisdictionem, ad alienam transferut dignitatem quod valde perniciosum esset exemplo. Cum, etiam si adeptus esset prædictus Nicholaus possessionem terræ prædictæ, per Assisam prædictam, beneficium petitionis hæreditatis prædictæ eis puellis plane suppetat in Curia nostra per breve de recto, maxime cum per literas de morte antecessoris agatur de possessione, & non de proprietate, & ex officio nostro in casu proposito, nihil aliud ad nos pertinebat, nisi tantum de ipsius Nicholai legitimitate probationes admittere, & ipsum cum literis nostris testimonialibus, ad iustitiarios nostros remittere. De consilio igitur Magnatum & fidelium nobis assistentium vobis mandamus, quatenus non obstante appellatione præmissa, non differatis pro eo sententiare, ipsum ad iustitiarios nostros remittentes cum literis nostris testimonialibus, ut de loqua coram eisagitata postmodum possint secundum legem &

& consuetudinem terræ nostræ Hyberniæ iustitiae plenitudinem exhibere. Teste H. apud Gloucester, 19. die Nouembris, vide anny a cest entret 39. E. 3. 20. 2. ou en brieve de Tottet, ne vnques accouple en total matrimony fuit plead, & ille fuit
cest loyme, q; quis mande fuit al Cuesque de certifier, q; certifi-
fia que il ne poest riens faire p; reason de hys inhibition que a
luy vient hors del Arches, cest returme fuit temus insuffi-
cient car la est dit, que il ne doet succourre de faire le com-
mandement del royst pur nul inhibition.

4. D'arraignement fait dit, que le bverry cause & reason pur
que l'Ecclesiastical Judge ne poet enquierre de legitimatio
ou Bastardy, devant que il ad receve direiction ou mand-
ment hors del temporal court del royst, consist en ceo, que
le comte Christian nauoit vnques Jurisdiction ou povert
de entremedier une temporale inheritance, directe ou indi-
recte. Car fuit note, que Chrys melme refusoit de med-
ier en cause de tel nature, quand sur petition fait a luy
Luc. 12. Magister dic frarri meo, vt diuidat mecum hereditatem, si respond. Quis me constituit iudicem, aut diuisorem
super vos ? Et pur ceo en le temps del Henr. 3. quant ie
blarped Jurisdiction del Pape fuit eleuate plus hault,
que vnques devant, ou puis, en les Dominions del Roy
D'engleterre, le Pape Alexander. 3. ayant graunt com-
mission al Cnesques de Winton & Con de enquierre de legiti-
ma nativitate del Agatha Mere fili vñ Robert de Ardenna,
& si el serroit troue legitimate, de restorer le dit Robert al
possession de certaine terres, dont il fuit dispossesse, estoant
informe que le Roy D'engleterre fuit graundement offend
que cest commission il renoube & countermaund ceo en cest
pointe del restitution de possession, comulant & cōfessant
que le establishment de possessions appertient al Roy, &
nemp al egilie : quel cas est report en le Canon ley, Dec-
retal. Antiquæ collectiones 1. libr. 4. titul. qui filij sunt legiti-
mi cap. 4. & cap. 7. en le 4. chapter, le commission est ex-
empte, mes cap. 7. la remotion ou countermanement ap-
perte en cest forme. Causam quæ fuit inter Fr. & R. de Ar-
denna, super eo quod mater iam tibi R. dicitur non fuisse de
legitimo Matrimonio nata, experientia nostræ commissum
terminandam verut, quia in literis nostris inseri fecimus, ut
prafatis R. possessionibus, quarum possessor extitit, faceretis
testimoni

Le coursé del triall de Legit. &c Bastandy.

restitu , si eadem possessione spoliatus esset , nos attendentem
quod ad regem , non ad Ecclesiam spectat , de talibus posses-
sionibus iudicare , ne videanur iuri & dignitatis charitatem
Christo filii Henrici Regis Anglorum detrahere , qui , sicut dicitur
cepimus , nostro est , & iurabatus , quod de possessionibus tem-
pus , cum iplorum iudicium ad se afferat pertinere , volumus
quod Regi possessionem iudicium relinquentes , de causa prin-
cipali cognoscatis , &c.

Mich'

Mich' 8. Iacobi.

Le Case del Royall Piscarie de le Banne.

Ale Riuier de le Banne en Ulster, q' deuidde le countie de Antrim, q' le countie d' Colrane, enultron 2. deagues q' la Mer, ou le streame est navigable. Il y a un riche piscarie bs Salmons, q' fuit parcell del antient inheritance b la Coronne, come appert p plusieurs Pipe Rollis, a l'ancienies, ou ceo est troue en charge come leuerall piscarie : mesme ceo est grant p le Roy al Cittie b London en fee ferme. Le profit q' cest Piscarie p le space de 200 ans passes, foye pris a l'ancienies en les Isles Seigniours qui ont fait incursion et intrusson sur les possessions del Coronne en Ulster, et ont possesse p fort main les territoires adioynant al dit riuier de le Banne, iusques al printemps an d' le rogne del nostre Seur le Roy q' oye est.

Anno primo Iacobi, Sir Randall mac Donel ad obtinere un graunt a lui et ses Heires p Letters Patents de le Territorie del Riuier, q' est parcell del Comte de Antrim, et adioynant al Riuier de le Banne, in ea parte, ou le dit Riuier est, et ad tout temps estre. Per eant Letters Patents le Roy graunt a lui omnia Castra, mescuagia, tofria, molendina, columbaria, gardina, hortos, pomaria, testras, prata, pascua, pasturas, boscos, subboscos, reddit, reversiones, & seruita, piscarias, pescationes, aquas, aquarum cursus, &c. Ac omnia alia

K

heredi-

Le cas del Countie Palatine.

hæreditamenta in vel infra dict' teritorium de le Rout in comitat Antrim, exceptis & ex hac concessione nobis hæredibus, & successoribus nostris reseruatis, tribus partibus plicationis fluminis de le Banne.

Et sur cest graunt **Sir** Randall mac Donell fait petition a le Seignior Deputy, desire misse en quiet possession del quart part del dit piscarie, que adonques per speciall order del Counsell Table fuit mise en sequestration. Le Seignior Deputy estant informe per l'atturney del Roy, que nul part de cest piscarie passoit al Randall mac Doneill per cest graunt, requiroit le resolution de les cheefe Judges estant del privy Counsell en cest matter, queux sur view de plusors Pipe-Rolls, en que cest piscarie fuit trouue seuerallment en Charge, come parcell del auncient inheritance de la Cozone, & sur consideration en del dit graunt fait al **Sir** Randall mac Doneill, certiffiont lour opinion & resolution, que nul part del dit piscarie passoit al dit **Sir** Randall mac Doneill, per les letters patent's auandit. Et en cest case divers points furent consider, & resolue.

I. Primum, comment que le rule del ciuil ley soit, que Flumin. & portus publica sunt, ideoque jus piscandi omnibus communis est in portu fluminibusque, quel rule est troue en Br. Con lib. 2. cap. 12. Uncore per le common ley del Engleterre home poet auer proper & seuerall interest, citien en un eaw ou tiner, come en un piscary: & pur ceo un eaw poet estre graunt 11.R.2. Plo. Comment 154. a. Si un graunt al auer aquam suam, le piscarie en ceo pallera, per ceo que est encluse in ceo patoll aqua. Et N. Br. 123. quod permittat gisst de libera piscaria, en tiel forme: Præcipe A. quod permittat B. habere liberam piscariam in aqua ipsius A. in N. que monstre que A. ad interest in le eaw. Iuxi piscary gisst en graunt & en tenure, & per graunt de ceo, le soile passa: car 40. Edw. 3. 45. Monstrauerunt gisst d'un piscarie, q'impli que ceo containe terre & demesne: Car autrement distelle ne poet estre pris en ceo, come est noate Plow. Comment 154. a. vid. 34. Aff. p. 11. graunt del piscarie in le riuet de Tesc. al Abbe h Riuaux saluo stagno molendini. Iuxi piscarie est demaundable per præcipe N. Br. fol. 2. c. Et affle gisst de piscarie N. Br. 179. l. Car home poet auer estate de franchementen in piscary, Fitz. Aff. 422. tempy E. 1. in af-

Le Case del Royall Piscarie de le Banne.

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Alle de mesme, le plaintif envoit que per leur de l'ordre, il est disfuble de son Piscacie : exception fait pris au contraire, p' ceo que tout escouchelement fait alligne auquel le Piscacie fait appartenir, & bientot que son Piscacie est bane et bannement per le Roy, per la force de bannement de mandat a quel franchiselement rapport appendant. Vide aussi Fitz. Assis. p. 71. n. 6. Henr. 3. Assise de liber tenemento, et le plaintif tenu Piscacie, & ceteras. Maryham post factum mandat o' complicitie, et. Statut 6. et 7. Ricard. 2. cap. 1. N. 1. Et assise d'apres 2. statut. Bro. 6. Ass. ap. 1. p. 2. Ass. p. 1. Et du p'ecunie f'auoir de cinqe shillings devant Linwood somme obligeant Piscacie non auffordurable de l'emploi. Thos. Aquil. 1. 2. q. 10. 2. Et est note p' Linwood supra, qd' fluvius est perennis decursus aquae, non flumen regis, p' ceo qd' fluvius aqua. Et la glosse se le rule del civit. Le plus haut des est dieux flumen ipsorum nisi inuenit mare, semper in eodem loco manet, sed aqua proferatur et continuatur, quia non manet, sed procul fuit extra editionem eius cuius flumen est, ut ad mare tandem perueniat.

Decondant il y a 2. ch'inds de riuers: nauigable, et nient nauigable; chescun nauigable riuert cy hault que le Mer flow et reflow en ceo, est apparten regale, & le Piscacie de ceo est aussi Piscacie royall, & appert au Roy per son Prerogative; mes en chescun autre Riuere nient nauigable & en l' Piscacie de tel riuier, les Tertenants ex viraq, partie aqua, ont interest de common droit. Le reason pur que le Roy ad interest en tel nauigable riuere, cy hault que le Mer flow & reflow en ceo, est ceo, que tel riuier partice de la marina del Mer, & est dit brache del Mer tant auant que el flow, s. 1. Ass. p. 93. 8. B. 1. Fitz. Coron. 399. Et le Mer nell' sollement desout le Dominion del Roy, come est dit & R. 1. Fitz. Protection. 46. La mer est del ligence del Roy, come de son Corone D'engleterre: mes est auxy son proper inheritance: & pur ceo le Roy auera leterre que est gained hors del Mer, Dier 15. Eliz. 2. 26. b. 29. Ass. p. 93. Auty le Roy a la les grand possession del mer, Balenes & Sturgeonis, & ceo queur sont p'c's regales, & mal habiert poent eux auer sans speciall graunt del Roy. Prerogativ Regis ca. 1. 1. Stanforde 37. 38. Bracton lib. 3. ca. 3. 39. Ed. 3. 35. a. Et le Roy auas wilde Swannes, come volatilia regalia sur le Mer, & banches de ceo. Le case de Swannes, en le 7. juillet des. Reg. portes

royal fish are acquirable by prescription. Hale, p. 21. there are certain glances in this case,

special charter, which is untrue, for they are acquirable by prescription or usage. ibid.

B. 2

Le case del Royall Piscarie de le Banne.

ports del Royall Coke : issint week del Mer est pur
fit royall, 5. Coke 107. Sir Henrie Constables case : il fit red
reason duant le Statute v 18. E. 3: nul subiect puillot pas-
ser ouster le Mer sans special licence del Roy meg la est
enact que la Mer soit ouert a tous merchantz. Et tous
portz a hauens q sont ostia & ianus Regni, appertainant
al Roy, p ceo q il est custos totius regni : a. Fit. Nat. Br. 113. a.
le roy doet de moyt sauver et defendre son realme, cibie vers
le Mer, que vers ses enemies : et que le roy ad mesme le
Prerogative a interest en les braches del Mer, et nauiga-
ble Riuers, cy hault que le Mer flowo et reflowo en eux, que
il ad in alto mari, est manifest per plusoz anthoritez et
records.

Hab. 41 1 Le Roy p les Letters Patents fait al graund Ad-
mirall d'ngleterre, graunt a lui non solement Jurisdiction
& power v determine maritime causez meg omnia bona, wa-
uiata, Floton, Ierzon, & Lagan, ac omnia bona, mercimonis, &
catalla in mara perdetta, seu extra mare projecta, ac omnia &
singula casualia, tam in vel super mare, vel litora, crecas, vel co-
steras maris, quam in vel super aquas dulces, portus, fluminis,
riuos, aut alia loca superinundata quæcunque, infra fluxum &
refluxum maris, seu aquæ ad plenitudinem, a quibuscunque a
primis Pontibus versus mare, per totum regnum Anglie, au-
Hybernia, &c. Emergentia, Contingentia, seu Prouenientia, &c.

2 Le commission de Hewers, q fuit agard p le Roy,
per vertue de son prerogative Royall, devant alcun statute
fait en tel case, extend non solement all walles & bankes
del Mer, mes auxi del nauigable Riuers, & freshwaters,
Regist. t. 127. a. b. N. B. 113. a. Et est recite en le statute de
25. Hen. 8. cap. 10. que le Roy per reason de son dignity &
prerogative Royall, doet prouider, q nauigable streames
sont fait passable, &c.

3 Le city de London per vn charter del roy, ad le
river de Thames graunt a eux, mes pur ces que fuit can-
ceau, que le sole & ground del riuier ne passoit per cest
graunt, ils purchasont vn autre charter, per que le roy
graunt al eux solum & fundum del dit riuier, per force de
quel graunt, le citie a cest tour receauve rents de ceuz,
queux fixont postz, ou font warkes, ou autres edifices,

fir

Calthrop 167
London by the Celerarie v. 167. by the grace of God King of England ad venturas
temp. Jac. 1. 1625. London is in Chancery

Le Case del Royall Piscarie de le Banne.

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Sur le soleil del dit riuier.

¶ 4. Enter les pleas del coroner, 40. E. 3, in Archivio Casteri Dublin, cest entry est troue, Domini Reges Angliae & domini Hyberniae de Iure Coronae habent per totam aquam de Boine, a Villa de Droghedagh, vsque ad Trim, filum aquae vulgariter vocatum le Watershard, continens in latitudine 24. pedes in loco profundiore eiusdem aquae, ita quod Batellæ, Maregium, & Marchandizæ per huiusmodi filum, hinc aquæ illincire & redire possint per filum aquæ predictæ, absq; impedimento &c. ¶ la vn Judgmët est enter in mesme le Roll, que vn weare erect per le Abbe de Mellefont en le dit riuier serroit abate, & sine imposse sur le Abbe, &c. Et ceo agree oue Glanvill que dit, que vn purpresture poet estre fait cibien in aquis Regijs, quam in vijs Regijs, vid. 19. Ass. p. 6. que le riuier de Lee est troue per Inquisition le hault stream del roij, & 1. & 2. Ph. & Mar. Dier 11. 7. a. le Thamez est appell le Kings stream, & in l' statute d. 28. Henr. 8. c. 22. enact in rest Realme, les riuers de Barrow, Noyr & Suir, sont appell the Kinges Rivers & les weares erect en eux sont appell Purprestures : & comment que le roij permet son people pur lour easse & commodity de auer common passage sur tel nauigable riuers, vnoce il ad sole interest en le soleil de tiels riuers, & auxy en le piscarie, comment q; le profit de ceo nest communement pris & appropriate per le Roij, si ne soit de extraordinary & certaine annuall value come cest piscarie de le Banne ad tout foit estre, vid. en le case de Swannes 7. Cooke 16. a. le Roij Henr. 8. graunt al Strangewaies coram illam liberam piscariam vocaram le fleet en Abbotsbury, que est vn bay ou creeke del Mer, & comment que l' Abbe ad piscary la devant le dissolution, est desire entende, que le Abbe at commencement auoit ceo per grant del Roij, esteant vn seuerall piscary sur brach del Mer, & per consequens vn piscary Royal. vid. Plo. Com. 31. 5. b.

¶ Per que fuit resolute, que le riuier del Banne, cy auant come le Mer flow & reflow en ceo, est flumen regale, & le piscary del Salmonis la vn Royall piscary, que appent al roij come vn seuerall piscary, & nemy al ceux queut ont le soleil ex viraue parte aquæ. Mes de autre part fuit agree, que chescun Iuland riuier nient nauigable, appartient al ownors del soleil, ou il ad son course, 28. Ass. p. 93. Et si tel

H. Matt. Hale says of this is a mistake: that such rivers are not called streams le roij in respect of property; but because they are of publick use, & they underly a speciall case; in like sort as publick roads and highways: not being the property in the strict sense of the word, but being the property in the sense of the law. Hale. p. 19. 43.

B. 3

riuer

Le case del Royall Piscarie de le Banne.

Rivier courge enter 2. mannozg, et est le Meate et Boun-
dary enter eux, l'un moitie del rivier & Piscarie appent al
vn Seignior, & l'autre moitie al autre, & ceo appiert Libr.
Intrae' fol. 666.b. en trespass quare pescatus fuit inseperali pis-
caria, & pescem inde, viz. 2. Salmones, &c. cepit, &c. le Defendant
dit, que il fuit seisis del Mannor de B. quod se exten-
filum aquæ
dit usque ad finem aquæ de W. quæ est eadem piscaria, in qua
supponitur pescationem prædictam fieri, ex australi parte, &
& le plaintiff codem tempore quo, &c. fuit seisis de ma-
nerio de A. cum pertinentijs quod se extendit ad medium fili
aqua prædictæ ex parte Boreali eiusdem aquæ, maneriaq; præ-
dicta ab Oriente & aqua longitudine versus Occidentem se ex-
tendunt, & quod ipse le defendant, & omnes illi quoru statum
ipse habet in manerio de B. à tempore quo non extat memoria,
seisti fuerunt de parte Australi prædictæ aquæ, ut de seperali
piscaria sua, vt de parcella manerij sui prædicti, & similiter ha-
buit communiam piscariæ in predicta parte Boreali eiusdem aquæ,
dicto manerio de A. pertinentem. Le plaintiff replie, quod a
aqua prædicta ex viraq; parte est son seuerall pescary, sanguis ceo
que le defendant ad common d' Piscary in Boreali parte dictæ
aqua. Vid. 2. R. 2. fol. 5. a. q' b' de rationabilibus diuisis gressus de
tiel Piscary.

3. Tiercement fuit resolute, que nul part de cest Royall
Piscarie de le Banne poet passer p' le graunt del Terr' ad-
joynant p' generall graunt d' tous Piscaries : car cest Roy-
al Piscarie nest appartenant al ter', mes est Piscary en grog,
et parcel del inheritance del Cozone aperluy. Et generall
parols en graunt del roy ne passeront tiel speciall royaute
que appent al Cozone p' prerogatiue, come mines royall,
americiaments royall, Escheats royall, ne passeront p' gene-
rall parols d' tous mines, americiaments, et Escheats. Et
a cest entent sont plusoz cases direct en le point, en le case
de mines, Plo. Comment. 333.b. 334.a. & 9. & 10. Eliz. 268.

269.

Darrainment fuit agree, que ou le roy ad graunt al
Sire Randall mac Donell tout le territorie adjoinant a cest
rivier, & tous pescaries deins cest territorie, exceptis tribus
partibus pescariæ de le Banne, que le quart part de cest pis-
carie ne passera a luy per cest graunt, car le graunt
del Roy ne passera rien per implication, 2.H.7.13. &c.

Hab. pa. 33. Inoliber concilio regis debet capi stricte contra regem, quando potest. *Ceterum*
intelligi duabus viis. 2 R. 3. 4. Le general grant del roy non presumitur excludere
seipsum, saunce special words. *Hab. pa. 112.*

Le case del Royall Piscary de le Banne.

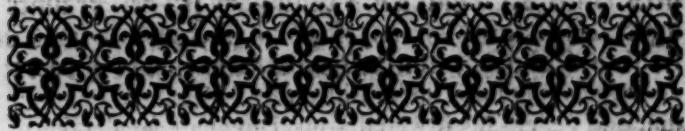
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Ceux points furent resolute en cest Case, per les rules & authoritie^s del common ley. Mes ouster ceo, diuers rules del Ciusli ley, & customary ley del fraunce, agreeable al nostre ley, en cest point, furent cite bozo^s de Renatus Choppinus un tressbone auteur en son Tractate de Domanio Francie lib. 1. titul. 16. de fluminibus. Fluminum sunt duo genera, dⁱt sⁱ, Regalia quædam, alia Bannalia, siue priuata. Regalia dicuntur, ex quibus Princeps iure patrimoniali vestigall capit, & in quibus modum & tempus pescationis constituit, vid. Stat. W. 2. c. 47. Et non solum regalia flumina nuncupantur, quod Regum dominio sunt attributa, sed etiam quod eorum curam sibi Reges ac Principes assumpseront, nec non ex eo, quod pescarias, ceterosque publicorum fluminum redditus, qui ærarij publici fuere, in fisca suum redigerunt. Sunt & lacus publici regales, flumiorum superiorum instar: nam lacus publicos locant, & vestigalia in fisca suum referunt, ideoque publicano, qui lacum vel stagnum conduxit, si pescari prohibeatur, utile interdictum competit. Iustissimum enim est ob vestigalis fauorem, interdicto eum rueri. Et quant al au-
ters riuers queux courge per confinium prediorum, si dⁱt que per prescription, ou permission des Princes, aut alio justo titulo, omnia talia flumina facta sunt priuata, quæ natura publica erant, & quod pescatio in certa parte fluij potest ex pacto constitui, vel continent multorum annorum viu acquiri: & sic potentiores annis accol^e, si plurib^e annis soli pescati sunt, ceteros pari iure vti prohibent, quamuis Mari, quod natura omnibus patet, seruitus imponi priuatorum cautione non pos-
test. Et ouster si monstre, que les auncient Roys de France pescationi in fluminibus publicis modum prescriplerunt, & pescarias, ac reliquos fluminū prouentus, qui ærario publico olim ascrihebantur, passim in fisca suum retulerunt. *Sur le ppe-
rogative del Roy deins le R^e si cite un bresle de Luuenall.*

Quicquid conspicuum pulchramque ex æquore toto est.

Res fici est ubique natu. Et Cuiatius de feodis f. 205. a. fisci
fuit anxx cite, ou si dⁱt, regalia sunt viæ publicæ, flumina
navigabilia, & ex quibus sunt navigabilia, portus, vestigalia,
monete, &c.

Trin.



Trin. 9. Iacobi.

En le Eschequer.

Le case del Countie Palatine de Wexford.

Et fuit troue p[ro]mis en l' county d' Wexford,
q[ue] un Prendergraft. anno 27. H. 8. fuit leissie
en fee d' etaine terf en le dit county, & ceo
teignoit q[ue] George donq[ue]s counte d' Salop
& Waterford, & seignior d' Wexford,
ut de persona dicti Comitis existet. Comit.
Palatin. Comitatus Wexford.

Fuit troue ouster, q[ue] p[er] le statute de 28. H. 8.ca. 3. q[ue] est en-
titled Le stat.de Absentees, fuit inact, q[ue] le roy H. 8. ses heirs et
successors aueront et enioyeront come en droit q[ue] le Corone
D'engleterre, touz Honors, Mannors, Castles, Seignio-
rities, Franchises, Liberties, counties Palatine, jurisdictions,
Fees d' Chinaler, Aduowsons, &c. q[ue] l' dit countee d' Salop,
auoit deins l' realm d' Ireland. Apres q[ue] le dit Prendergraft
moyst leissie d' cest fee, son heire esteant d' plein age.

Et si ore, s[ic] cest office, l' tra sera leissie en mains q[ue] le roy, p[er]
premer leissin, fuit l' q[ue]stion. Et s[ic] ceo un point solempn fuit co-
ulder, viz. Si l' heire del dit Prendergraft tiendra q[ue] le roy in Ca-
pice, ou p[er] q[ue]l tenuer il tiendra le dit terf. Et fuit resolue, que
ore il tiendra cest terre del Roy in Capite.

Mes

Le case del Countie Palatine.

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Mes fait object y l'council d' Prendergast, q' l' tenure
est tenure y l' office ne fira nre bo. Tenure del Roy en
Capite, mes Tenure en common Socage y fealty tan-
tum, p 3 reasons.
Tenure en Capite contient estre, ab antiquo de Coro-
na, come est expresse en l' Stat. d' Prerogativa Regis, cap. 1.
Et est dit, 30. H.8. Dier 44. a. q' Tenure en chief comenceoit
du auctient temps, sur grants d' Roy p'sence d son pson a
la Coronation: mes cest Tenure est noueloit bueus al Roy
H.8. p l'art d' Absence, q' p ceo ne puet estre Tenure d' Roy
en Capite. si non q' autre d' autre meydiement.
Tenure en Capite est toutes foiz. Tenure d' pson d' Roy,
N. B. fol. 5. Et est de cy hault nature, q' nul homme puet
creer ceo, ou auer ceo, sorsq' l' Roy mesme. Car nul subject
est able d' auerser tel Tenure, ou capable del grant d' tel
Tenure. Car si l' Prince l' eign s' tis del Roy, duant l' Sta-
tatute q' Quia empires terrarum, ad facit secessit d' tene, a te-
ner de son pson, ceo ne serroit Tenure en Capite. Come est
tenus 30. H.8: Dier 44. b. q' tules Tenant d' un auctient
honor, come Berkhamsted reignoit del Roy en Capite, comest
q' le Roy grant l' dit honor al Prince, q' a ses heires Royes
D' Angleterre, bnoce q' Prince naera l' progration d'
Capite Tenure en cest cas, durant le vie del Roy, 21. Ed-
ward. 3. 41. b.

Paul Tenure create y Subject, comest que soit Te-
nure en gros de son pson (car subject puet auer Tenure
en gros de son pson, 8. Henr. 4. 1. 19. Edw. 4-9. 13. El. Dyer
290. b.) puet y aucun possibilite grois ou aspre d' estre un
Tenure en Capite del Roy. Et pur ceo, si le Prince, ou
auter subject create tel Tenure de son pson, et apres
est fait Roy, ceo ne deuient Tenure en chiese. Et si le
Roy vient al Seigniorie en gros per attaindez un Sub-
ject de felonie, ou per common Escheat, ou per descent, ou
y purchase, le Tenant ne tiendra de lui en Capite, mes
come il reignoit deuant 30. H.8. Dier 44. b. Illint si le Roy
purchase un Manoir de que I. S. est tenant, si le Roy graunt
le Manoir al auter reseruant les services de I. S. q' I. S.
tient del pson del Roy, car les services sont en grosse,
bnoce il ne tiendra en Capite, 29. Hen. 8. Br. Tenures 61. &
Br. Lucy 57. Et le cas 17. Eliz. Dier 345. a. semble plus
fort.

Le case del Countie Palatine.

fort que le case en question. Car nous trouvons devant l'escrivain d'Cardigan, q' certain Tewkesbury fuit ambeysant et tenuis del Prince de Galles, q' le tenaie de alez en guerre del Prince, a les charges del Prince, & q' b' Owen ap David regnoit la dit terre du Royne Elizabeth come sua principallite q' Gales en capite : b'ence fuit tenuis p'council del couer de Wardes sur Tenure en capite. Vide le Statut de Magna Charta ch. 52. Et article de 28. Henr. 8. fol. 1. b. a cest pur poise.

Mesme d'autre part fuit arguie q' le councell del Roy, et résolue p' Sir Io. Denham chiche Baron, et tout le court, que cest Tenure come ces estatoue, est Tenure de capte. Et en le Argument de cest point plus large, choses furent principallyment considerer, 1. le Original et nature de county Palatine : 2. le nature et qualite del Tenure en capite.

Et pur le premier, fuit p'ymement obserue, que Comes ou Countee, est un nosme ou title del honoř, & dicitur à Comitando, vel sequendo Principem : et ceulz p'sons queront auance a cest title fueront Summi Procesos, & Rege proximi, come Castaneus in Catalogo glorie Mundi dit. Et cest nosme ou title de honoř fuit ab initio accompagne un honorable office. Car cest q' fuit Comes ad un territorie assigne a lui, p' garder et gouernoz : q' fuit appelle Comitaus. Cest title ne commenceoit destre frequent, tanque le declination del Roman Empire, restauoit en le temps del Charlemaine, que ordaine & institute diuers Countees in Germany, Italy, & France, & done a eux non seulement un absolute commandement in Partiall affaires deins leur several Territories, mez au p' ordinary jurisdiction in civil & criminal causes : & p' ceo estoit en le Imperiall law, Quod Comes est index ordinarius, & Comes en Dutch signifie un Judge, cybien que un Comes id 1761

Mesme ceur Countees ne furent toutes de equalle degre : car furent de 2. sortes viz. Comites simplices, & Comites Palatini, ou del primer & second ordre. Car comment que Comites simplices auoient tel commandement & jurisdiction, come auant est monstre, b'ence Comites Palatini, furent de plus hault rang, & auoient diuers Royall franchises & priuiledges, que ne furent graunts al simple countees.

Cest

Le case del Countie Palatine.

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Cest nosme & office du Countee furent introduire en Engleterre
hors de Germany, ples armes long temps avant l'Norman
Conquest, Merton Case, 4. Coke 3.4. & le Recens de
Domesday prouve ceo, q fait mention du several countees en
Engleterre. Mes le premier County Palatine, viz. le County Pa-
latine de Chester fuit erect en temps du Willi. le Conqueror.
Cambden 4.6.

Pur le nosme del Countee en nosme ley, certes, ceo est le
plus auctient nosme de dignite & honoz, & devant l' temps
de Edw. 3. fuit le sole nosme de dignite & honoz en En-
gleterre. Car le nosme et title de Duke, Marquis, & Vicount
sont de plusne temps : car le premier Duke fuit create en
temps du dw. 3. le premier Marquis en temps R. 2. & le pri-
mer Viscount en temps Henr. 6. et le nosme ou title du Ba-
tron, nest nosme de dignite ne addition. 8. Henr. 6. 1. o. 2. le
Seigniour Louell's case. Mes Countee est parcell del
nosme, et del substance del nosme, et si soit omis en Brieft,
le Brieft abatera, 39. Edw. 3. 35. le case del Gilbert Bea-
frem Countee de Angus, & 14. Edw. 3. Brieft 278. le case du
Hugh de Audley Countee de Gloucester. Et cest titl du coun-
tee est instar cognominis, & ne besouign du brieft auz duclosin, & si
l'action soit port des Io. Countee de Oxford, sans auz duc-
nosme est sufficent, 7. H. 6. 27. 1. E. 3. Brieft 454. Auty fait
titl nest merge ou confounded y title du Duke, car si countee
soit fait Duke pendant l'brieft, ceo ne abat l'brieft. Comme
du l' Countee du Lancaster fuit fait Duke du Lancaster 25. E. 3.
39. Brieft 409. il nient ou action soit port des countee du Rich-
mond, si plead q il fuit duke du Brittan, & non allocar 1. E. 3.
Br. 473.

Pur l' office du simple ou ordinarie Countee per nosme
ley, il avoit custodiam comitatus, & auctorite de rauder,
posse comitatus, a supprember rebellions & tyotts, &c. que
fuit au Martiell command: il avoit aussi Juridiction
en civile et criminall causes, et a cest entent, il avoit 3.
courts: 1. son Tourn ou iudicium criminall causes: 2. le
county court p emill causes. Le premi fuit le court du 1599,
car pleas del coroner ne poent estre tenuus en autre court
que en court del Roy: le second fuit le court del Coun-
tee mesme, et pur ceo est appell le county court: mes pur
ceo que il fuit aussi immediate officer al court del Roy, pur
toute

lab 6. 53. 6. x cont.

auty l'brieft n'abattra si l'brieft
est fait chivaler, pendant l'brieft.
2. 1. Edw. 3. 49.

car ou fait l'assise bon
de ne effect orient plus
Mobility d'Angleterre, ou Scotla-
2. 1. 7. 1. 2. 4.

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faire exection de balets du Roy, & le Comes du Countee
meisme comitybarur Principem, & fait h^e plus part attendant
si luy ou en son Conveill ou en ses guettes, l^e Roy fesoit un
Lieutenant du Deputie a luy, come Fineux dit, 12. Henr. 7.
17. b. cest as aultre, le Viscount, q^u ore execute mesme l^e office
en tous points. Et esdust note q^u en tous countees que
sont simple countees, & subiect al ordinary iurisdiction del
comes del Roy, le Roy meisme fait l^e Viscount, mes deings
countees Palatine, ou le Countee ad iura Regalia, le countee
meisme, q^u enny l^e Roy fait l^e Viscount 13. H. 7. 17. & 18. & 4.
Coke 33. Mitrons case. 22. E. 4. 22. Et tout ceo fuit note si l^e
originall bl countee en general, & l^e nosme l^e office bl Ordina-
rie Countee.

Pur l^e originall, nosme, & prrogative bl Countee Palatine
fuit un extraordinaire countee : 1. fuit note & obfue,
que fuit appelle Palatinus, vel Comes Palatinus, q^u ceo que il
fuit un chiese officer & cancellor en l^e Palacie du Empetor,
& en bit q^u il ne fuit soleint companion del pson del Prince,
mes comes curarum. Par extans curis, solo diademate dispar :
& pur cest reason, le Prince communice a luy plusors de ses
Boiall prerogatives 2. fuit obserue que cest honoz de county
Palatine fuit primiermet institute per l^e Empetor, appes
que le Empereur fuit translatz al Germany. Et pur ceo
les Dectors del Imperiall leysaignont, Quod solus Prin-
ceps, qui est Monarcha & Imperator in regno suo, ex plenitu-
dine potestatis, potest creare Comitem Palatinum. Baldus sic
Rescript. 6. de precibus Imperatori offerendis.

Fut auxi resolute, que accordant a cest rule, le Roy del
Englettere poer bien creater un countee Palatine : cat
il est Monarcha & Imperator in regno suo : come est ap-
pareant per plusors recordz, & Judgementez en Parlia-
ment.

En le preface del Seignoz Cooke al quart partie de
ses Reportz, un auctient charte del Roy Edgar que de-
crite le ffe del Roy, est tel, Ego Edgarus Anglorum Basileus,
omnium Insularum Oceani que Britanniam circum il-
lent, cunctarumque nationum, quae infra eam includuntur, Im-
perator & Dominus, &c.

Et

Et a cest entent Matth. Paris. in historia maiori, fol. 272. a. dit que quant ha difference feroit presenter le Roy William Rufus, & Anselme Archevèque de Caterbury touchant la Jurisdiction del Pape en Engleterre, Rex Willielmus alleguit, quod spectabat ad officium Imperatoris, quem vellat Papam eligere, & ob eandem rationem, quod nullus Archiepiscopus vel Episcopus regni sui Curie Romanae vel Papae subesseret, præcipue cum ipse omnes libertates haberet in regno suo, quas Imperator vindicabat in Imperio.

Per le Statutes d. 28. H. 8. cap. 2. enact en cest Realme, est declare, que les Roys de Engleterre, are lawful Kings and Emperors of the said Realme of England, and of this land of Ireland.

Maint y l' Act de 16. Rich. 2. cap. 5. communement appelle Statut de Præmunire, est auxp blare, That the crown of England hath euer bin so free, as that it hath bin subiect to none, but immediately unto God : sç qd le Statut de 25. H. 8. enact en Engleterre, a establish en cest Realme, 28. Henr. 8. cap. 20. ou est recite que les Realmes d' Engleterre et de Ireland, recognising no Superior vnder God but onely the King, haue been, and yet are free from subiection to any mans lawes, but onely to such as haue bin made and ordained within the said Realmes, &c.

D' atrairement, la Coron de Engleterre en plusors autz Actes de Parliament, est appell Imperiall Crown, et la Coron de Ireland est appendant a ceo, 28. Henr. 8. cap. 20. Et veult a kny al Imperiall Coron de Engleterre, 33. H. 8. cap. 1. Car coment que Brittany fuit bnfotis subiect al Empiere de Rome, que Ireland ne fuit bnoneg, bnone reof fute abandon, et tout oultrement relinquish per le Empereur de Rome Anno Domini 428. sç quant ceo fuit apres reduce al Monarchy, tel Monarcha fuit, sç bnone, bnone absolute Emperor : accordant a ceo qd Cassaneus in Catologo gloriae Mundi, dit, Reges absoluti habent Imperium, sed iei possunt Imperatores. Cest il cite le Tertius, 1. Regum, cap. 3. Hoc erit me Regis qui imperaturus est vobis, sicut si dicit, Rex Anglie est absolutus Monarcha in Regno suo. Et pme ceo le Roy D' Engleterre estoit un Imperator deinceps se a dominis, post acceptatione aliquie auantibus, create Comitem Palatinum. bnone d. 28. Januarii anno 1170. l'ayoyt

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Et s'icome le Roy D'engleterre, ad absolute pouer de creater countee Palatine, il sunt il ad create plusors countees Palatines en ambideux Realmes, 1. En Engleterre, le countee Palatine de Chester, fuit create en temps del William le Conquerour, Cambden fol. 464. Et Mat. Paris. Histor. magn. 406. appelle countee de Chester, Comes Palatij: 2. le county Palatine de Durham, qui statim à tempore conquestus comitatus Palatinus iudicatur est, Cambden fol. 600. Mes le common opinion est, q R. 1. create l' Evesque Pudsey le primer countee Palatine de Durham. 3. le county Palatine de Lancaster, q fuit erect en temps Edw. 3. Plow. Comment. 215 b. Et ceulz 3. counties tantsolement ont estre counties Palatines en Engleterre. Car Ely, comment que fuit un liberty d'auer conulsans de tousz causes secular, graunt per le Roy Edgar appelle Saint Etheldreds liberty, ne fuit unqz county Palatine: 3 les Seigniorz Marchers & les Marches de Gales, comment que ils auoient Royall Seignioriez en lour seuerall Territoriez 19. Hen. 6. 12. & 152. 11. H. 4. 40. nunc nul deus auoit tousz les privileges del countee Palatine.

En Ireland 3 Palatinates fueront creat en temps H. 2. le primer en Leinster, que fuit grant al county Strongbow per tout cest Province: le second en Meth, graunt al Sir Hugh de Lacy l'Eigne: le 3 en Ulster, graunt al Sir Hugh d' Lacy le puisne. Mes apres quant William le Marshall D'engleterre, ayant marrie le sie & heire de Strongbow, adfille 5. fitz a 5. filles & le 5. fitz esbeant morts launs issue, le Seigniorie de Leinster descendoit a les 5. filles, sur partition fait entre eux, chescun ad entire countie a lotte a luy yz: le countee de Catherlogh fuit a lot al eigne, l' countee de Wexford al second, le county de Kilkenny al tierce, le county de Kildare al quart, le Territoire de Leix, que est ope le Queens countie, al cinquaine: & sur ceo chescun de eux, ad un seuerall countee Palatine, & tousz les libertes & prerogatives en sa seuerall purparty, come Strongbow alie Marshall, auoent en l' entier Seigniorie d' Leinster. Come si 3. parteniers sont un Mannor queur font partition, chescun deus auera Mannor & court Barons deins sa purparty a 5. Henr. 8. 4. Il y auoit aussi certaine Royal libertie deins l' county d' Kerry & Desmond graunt per

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per Ed. i. al Thomas Fitz Anthony : et autiel en countie de Tipperary graunt al countee de Ormound p Ed. 2. qd solemnēt continue a cest iour, ou tousz les autres sont resume ou extinguisib.

J. & J. & C. County of Lancashire
Palatinate
Aux chescun countee Palatine create p le Roy D'Angleterre, est Seignior del un entier county, et ad en ceo iura regalia, quæ iura regalia consistont en 1. principall pointz, viz. en roiall Jurisdiction, et en Roiall Seigniorie. Per reason de son roiall Jurisdiction, il ad tousz les hault courz, & Officers de Justice, q le Roy ad : & per reason de son royal Seigniory, il ad tousz les roiall seruices, et roiall Escheats que le Roy ad : et par ces cest county est merelement distoyne, & separete del Corone, come est dit en lecase del Duchie Plow. 2 15.b. Il s'int que nul bries del Roy courre la, hors bries de Error, que esteant le dernier ressort & appeale, est solement except hors de tousz lour Charters, 15.Elis. Dyer 321. & 345. & 34.H.6.42. Il s'int en Ireland que est realm aperdu, erroneous iudgements done en l chief place la iure tenet in Bank le roy en Angleterre. Et Bracton lib. 3. titul de Corona cap. 8. dit, q Comites Palatini regalem habent potestate in omnib', salvo domino domino Regi seu Principi.

Le roiall Jurisdiction de countee Palatine appert en le charf del Edw. 3. graunt per authorté de Parliament p que le Palatinatus de Lancaster est erect : ou le roy graunt al John de G. Duke de Lancaster, quod habeat infra Comitatum Lancastriae Cancelleriam suam, ac brevia sua, sub sigillo suo pro officio Cancelleriar deputando, consignanda : Iusticiarios suos tam ad placita Coronæ, quam ad quecunque alia placita communem legem tangentia tenend. ac cognitiones corundem, & quascunque execuções per brevia sua & ministros suis ibidem faciend. & quacunque alia libertates & iura regalia ad Comitatum Palatinum pertinenter, sed & liberè & integrè, sicut comes Cestrus infra eundem comitatum Cestrus dignoscitur obtinere, &c. Cest charter de Lancaster ad relation al royal liberties del county Palatine de Chester, que enoit mesme les courts & Jurisdiction, contient que le charter del Will de Conquerour, que fait Hugh 111 prie le premier quartier de Chester, soit gardé, viz. d'ancres pessis

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tout cest countie a luy & a cest heires , ita liberè ad gladium sicut ipse Rex tenebat Angliam ad Coronam . Cest antient graunt, per auctient allowance done tous les Liberties & Prerogatiues del county Palatine : & issint le countee ad royll jurisdiction la, coment que les courts del hault Justice ne sont expresse en le dit Chart, et sur cest reason, come semble est dit 12. Edw. 4. 16. q le countee Palatine de Lancaster fuit per Parliament tempore Ed. 3. mes Chester & Durham sont per prescription : mes ceo nest destre entend meurement per prescription, car nul franchises que se exalat in Prerogatiuum Regis, poe este gaine p prescription, 1. Henr. 7. 23.b. Mes p ceo que tiel generall parols en les auctient graunts p blage et allowance donont royal jurisdiction, ou tiels graunts a cest tour ne passeront ry hault Liberties; 1. Henr. 7. 13.b. Vide lib. Intrac' 419.a. ou est plead que Chester fuit county Palatine p prescription, & dmurer sur cest plea.

Mes que Chester & Durham fuit counties Palatine, ont tous les Courts de Justice, et mesme le Jurisdiction royll, que est particulierement graunt al Dides Lancaster, p le Charter de Ed. 3. est apparent p plusors authoritez p Chester, 12. E. 4. Fitz. Jurisdiction 61. 34. Hen. 6. 42. 19. E. 3. Fitz. Jurisdiction 29. 15. Eliz. Dyer 321.a.b. But Durham, 5. E. 3. 58. Fitz. Jurisdiction 30. ou es dit q county Palatine de Durham ad ses Justices & Chaumerie demesne, 1. E. 4. 10. 45. E. 3. 17. 5. B. 2. Fitz. Quare impadicte 165. 11. Eliz. Dyer 288. p que est manifest, que tous le counties Palatine en Engleterre auoent royal Jurisdiction deins lour Territories,

Ils auoent auxp un royll Seigniorie, que consistoit en 2 points, 1. en Royall seruices, 2. en Royall Escheats, Quant al Royal seruices, il auoent power d creat Tenures en capite de eux mesmes, & auxp p graund serianty : car ils auoent power de creat Barons : come le primer Countee de Chester immediatly sur son creation substitut Barones, viz. le Baron de Hawarden, le Baron de Malbanke, le Baron de Malpas, le Baron de Wimerton, &c. Icanden Cheshire 284. & plusieurs autres noblesses auoent tiels Barons deins leurs counties, come le Baron de Walton en Lancaster, & le Baron de Wigan le Wiche. Et checun Barons es tenus per

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per graund Serianty, 2. Coke le Seignior Cromwels Case, 8 i.a. & test capite Tenure del county Palatine est accompanie que les Prerogatiues, que sont incident al Tenure en capite del Roy : car le heire suera liuerie hors d' la chancerie del Seignior & sil enter devant liuery, il sera adiudic entrudoz, & rendra les meane proffits, &c. Et auxx paient sine pur alienation, 14. Hen. 4. fol. 5. & 6. & 26. Hen. 8. 9. De tre tenus deings le county de Lancaster liuerie sera sue, car le Duke la, ad iura regalia, 28. Hen. 8. Bf. tit. Livery 55. liuery sera de tre en le countie de Lancaster parcel du Duchie, contra de terres hors del countie, 13. Eliz. Dyer fol. 303. a. Office troue p commission hors d' Chancerie al Westm. Il test tenus in capite del county Palatine de Chester, est void: Mes si troue p commission hors d' Chancery in l'Eschequer la, 19. Eliz. Lyer 359. b. James Manley tenuit de Arthur Prince ut Comite Cestria, & auoit liuery fait a luy, que fuit imperfect a boyd en Ley, per que il enter, & fuit tenus intrudoz sur possession del Roy, apres le mort du Prince Arthur.

Quant al Royall Escheats, le countee Palatine auoit les Escheats de Treasons, que le Roy per son Prerogative auera, de terres tenus b' tous auters Seigniors: mes ceo est desree entend des Treasons que fueront al temps quant le Countee Palatine fuit erect, & nemi de nouell treason p Act de Parliament apres, 12. Elizab. Dyer 288. b. 289. a.

Et siconme chescun countee Palatine en Engleterre auoit tel Royall Iurisdiction & tel Royall Seigniorie come appiert p les authoritez devant milles : Illint chescun countee Palatine en Ireland auoit mestme les prerogatiues, come appiert p plusors Records de test Realme.

Pur le Seigniorie de Leinster dont le countee de Wexford fuit parcell, le countee Strongbow auant traire cea cibien per conquest, que per mariage del sie & heire de Mac Morough Prince de Leinster, surrendre tout le dit Territorie al Roy Henr. 2. & reprist graunt del Roy de tout que il ad surrendre, forsque del Cittie de Dublin cum cantredis adiacentibus, ac Villis maritimis & Castris: de quel surrendre & graunt, Giraldus Cambrensis fait men-

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tion, libro primo de Hybernia expugnata cap. 28. Et comment que cest Dugmell graunt nest troue de Record icy, vntore est manifest p plusoz s Recordz q William le Marshall countee de Penbroke q marier la file t heif d Strong-bow , & ses 5. fits successiuement: a apres ses 5. fitz Coparcenerz en lour seuerall purparties de cest graund Seigniorie auoent iura regalia cibien en point d jurisdiction, q en poynt d seigniorie.

Le charter de Callan un vill en le couoty de Kilkenny dat. 20. Martij 20. Ed. 3. proue ceo expressemment, que fuyt monstre avant, en cest forme, Lionellus dux Clarentia, Radulphus Comes Stafford, & Anna la Dispenser domini libertatis de Kilkenny, omnibus ad quos presentes literæ peruenient salutem. Inspximus chartam Will. Mareschalli Comitis Pembroce, domini Lageniæ Burgensibus villa de Callan, non rasam, non abolitam, nec in aliquo viciatam, sub hac forma, viz. Sciatis qd ego Willielmus Mareschallus Comes Pembroke, &c. concessi Burgensibus meis de Callan, omnimas libertates quas decet Burgenses habere, & mihi licet conferre, viz. qd nullus Burgensis trahatur in causam, vel respondeat de ullo placito, quod pueniat infra metas Burgi, in Castello, vel alibi, nisi in Hundredo villa, exceptis placitis q sunt de hominibus hospitiis meis, concessi etiam eisdem Burgensibus matrimonium costrahere, ibi & filiis, & filiabus, & viduis, sine licentia dominorum suorum, nisi forte forinseca tenementa tenuerint de me in Capite extra Burgum, &c.

Auply charter d'auua Rosse, alias Rosspontis en l' countie de Wexford grant al dit vill p Roger le Bigod countee de Northrolke, que marier la file eigne del William le Marshal, ad mesme les clausies come appert p l'entourement de ceo en le Chauncerie icy. Except Charters fueront monstres, a prouver que le Seignior de Leinster auoit Tenures en capite, & per consequence un Royall Seigniorie deins cest Territoire.

Et a prouver auyp que il auoit Royall jurisdiction que est aux marches de countee Palatine, 2. aux charters fueront monstres, 3. fait inspximus portant date 1. Henr. 4. en l' Isle of Man, inspximus quasdam libertates usus & consuetudines per Bregentes villa de Kilkenny in eadem villa habitos & visitatos acister ceteras libertates, ijs per chartas Willielmi Mareschalli

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reschalli quondam Comitis Pembroke concessas, & sub magno sigillo, quo domini libertatis regalis de Kilkenny in cancellaria sua ibidem dudum vtebantur consignatas, & coram nobis in Cancellaria nostra ostensas in hęc verba, &c. per que appiert, que si auoit hault court de Chauncery, & graund Seale, que est un certeine argument, que il auoit iurisdiction Royall, en tous autres points, come les countees Palatines en Engleterre.

Et a celi entent fuit auxi monstre le charter de foundation del Abbey de Tustque, en mesme le county de Kilkenny, per que le dit William le Marshall ad done al dit meason diuers franchises & libertes. Et quod habeant sibi omnimodam forisfacturam hominum suorum: sola iustitia vita & membrorum mihi & heredibus meis retenga quip patols monstront que il auoit power de exerciser hault iustice en capitall causes, ou pleas del cozone, que es autre manifest pzoofe de Royall jurisdiction.

Et comment que ceux records parlent rausselement del county de Kilkenny, uncoze est bien vnde pceur, que le Seignior de Leinster as mesme les prerogatives en le county de Mexford, car il auoit soulike un encier Palatinate per tout le Territoire de Leinster, dont Mexford est parcell, tanque le partition auantoit fuit fait.

Mes a prouer expremement, que le Seignior de Mexford, apres le partition fait, auoit iura Regalia deins cest county, le Statute de Absences a 8. Henr. 8.c. 3, fuit monstre, per que le Seignior de Catherlogh, que fuit le inheritance del Duke d Northfolke, & l Seignior d Mexford que fuit le inheritance del countee de Salop, fueront resume, & best en la cozone: car en le preamble del act est recite, que les dit Seigniores en ditz leuerall countees auoient power de tener touts manner de pleas, assint que les brestes del Roy ne courgeont pas la, & en le corps del act, touts countees Palatine & Royall iurisdictioun sont p expresse parolle resume. Et bin auer act fait en mesme le Parlement de 28. H. 8.c. 3, nient Mexford, fuit encti produise, per que le Royall iuris de Mexford estoit extenuer per le dit act de Absences, fuit souue en toutes points, soulike en le power de graundes pardons, & aux prouiso, que terra lotall al Justices de common Banke al

Dublin

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Dublin de tener plea sur brieve d'entry en le post, & accepter conusans des fines des alcuns terres deins le county de Wexford. Et plusors auts Records fueront monstz auant, p que fuit manifest, que Wextord fuit vn absolute countie Palatine, et p consequence le Seignior la auoet cibien vn royall Seigniorie, que vn royall jurisdiction vid. les Plea Rols d'Exchequer, 3. E. 3. in Breminghams Tower, ou Adam le Rous & la sene pleadant licence de alienation de Terres tenus de Seignior d'Wextord, quant le dit Seigniorie fuit en mains del Roy; vid. auxy in Archiu. Turris London le liuerie fait al Laurence Hastings countee de Pembroke & seignior de Wexford & toutes ses terres en cest Realme, en que son countee Palatine & iura regalia sont specialment expresse & mention.

Et a prouer cest point plus pleinement, divers auters Records fueront monstres, per queux fuit manifest que les autres countees Palatine auant mention en cest Realme auoient mesme les Prerogatives del Seigniorie & Jurisdiction royall, 1. Come le Seigniorie d'Meth, que comment que fuit graunt per Henr. 2. al Sit Hugh de Lacy en general parols en cest forme, viz. Henricus Rex, &c. Scias me dedicasse & concessisse Hugoni de Lacy, pro seruicio suo terram in Midia, cum omnibus pertinentijs suis, per seruicia quinquaginta militum sibi & heredib' suis, tenend. & habendum a me & heredibus meis sicut Murchardus O Melaghlin (que fuit le Tres Roy de Meth devant le conquest) eam tenuit, vel aliquis aliis ante illum, vel postea. Quare volo & firmiter præcipio, quod ipse Hugo & heredes sui post eum infra predictam terram habent omnes libertates & liberas consuetudines quas ibi habeo, vel illi dare possum, &c. quel Charter fuit enroul en le tourt del Common pleas, i. Ed. 2. al petition de Geff. de Geneuil, si auoit marie vn des coparcens de ces Territorie, & est oye trouue enter les Records de Breminghams Tower. Uncor le s Seigniorz de cest territorie, auant le cest Seigniorie descendoit al Roy Ed. 4. ont en iura regali la, come l countee Palatine d'Chester, q auoit auxy son Palatinat graunt a lui p general parols, come devant es monstre, cibien en point de Seigniorie, si en point de jurisdiction.

Et

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Et appouer ceo le Charter de Cess. de Geneuil auantdit facta magnatibus suis Midiz, fuit monstre, esteant registred en le Liger booke de Tristernagh, en ceux parolz; Sciant praesentes & futuri, quod ego G. de Geneuill, auditus & intellec-
tis chartis & monumentis magnatum meorum Midiz, & antecessorum suorum, ipsorum, viz. qui cum Hugone de Lacy seniore ad conquestum suum primo venerunt in Hyberniam similiter & eorum qui de Waltero de Lacy filio & herede dicti Hugonis sunt feoffati, per assensum & consensum Matildæ de Lacy vxoris meæ, concessi & hac præsenti charta confirmaui pro me & prædicta Matilda, & heredibus prædictæ Matildæ, magnatibus supradictis & heredibus eorum, placitum Namij vetiri de omnibus tenentibus in eorum terris, in curijs suis terminare, & si per aliquem dictorum magnatum placitum de verito Nauio moueat, p querelam alterius magnatis, qui de nobis tenet in capite, in Curia mea, vel prædictæ Matildæ vel heredum prædictæ Matildæ huiusmodi placitum ibidem terminetur: præterea si in terris dictorum magnatum Hutesium leuari contingat, vel clamor, Viccomes de Trim inquisitionem capiat, utrum tales transgressiones spectent ad Coronam vel non, & si transgressiones illæ spectent ad Coronam in Curia mea vel dictæ Matildæ, vel heredum dictæ Matildæ omnino terminentur, & si non spectent ad Coronam in ipsorum Curijs terminentur in quorum tenementis oriuntur. Cest charter proue ambeideux points, scilicet, le royall Jurisdiction, & le royall Seigniorie: car appiert per ceo que le Seignior de Merv auoit power de determine tous plesas del Corone, que est principall point de Jurisdiction royall, & que il ad auxy Tenures en capite, & magnates, deings son Territorie, queux magnates sont tiels Barons come le countee de Chester ad create deings son County Palatine come est auantdit. Et pur ceo plusors Gentlehomes cybien en Merv que en auters Territories, queux auoient tiels Royall libertes, auoient le title de Barons, come le Baron de Skreene, le Baron de Nauan, le Baron de Galtrim, en Merv, le Baron de le Narow, & le Baron de Rhebane en Kildare: le Baron de Idrone en Catherlogh: le Baron de Burnchurch en Kilkenny: le Baron de Nenih en Wexford: le Baron de Loughmo in Typperary: le Baron Misfit, & le Baron Savage in Ulster.

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Et par ceo, tout temps depuis que cest Seigniorie de Meth deueignoit al Corone per discent al Edw. 4. ceo ad estre tenuis come vncertain Ley en l' Eschequer icy, viz. que si trouve soit y office que aucun est deins le county de Meth soit tenuis del roy come de son Mannor de Trim, per regale seruitum, que ceo est un Tenure en capite, & tout foiz lies-ries ont estre sue de tiels terres: come appiert per innume-rable Recordis de cest Court, p ceo que cest regale seruitum fuit Tenure en capite del Seignior de Meth quant le coun-ty Palatine fuit en Esse la.

Et ouster ceo, a prouer le roiall jurisdiction del Seig-nior d Meth, un record fuit monstre del tout le proceeding en Assise de nouel disseisin port per John countee de Salop versus Willielmum Nugent & sa femme, pur certaine terres en Moyrath: per quel record appiert, que Anno 25. Henric. 6. Rich. Duke de Yorke abonques Seignior de cest Liberty, graument le commission de prendre cest Assise, desouth le teste de son Seneschall en cest forme; Richardus dux Ebo-rum, Comes Marchia, & Ultimie, dominus de Wigmore, Cla-re, Trim, & Conaghr, dilectis & fidelibus suis Willielmo Bois justiciario suo ad placita coram Seneschallo suo libertatis suæ Midia, Richardo Bathmili, Edwardo Somerton Armigero, Willi. Sutton Armigero, & Roberto de la Field, Armigero, salutem. Sciat, quod constituimus vos Iusticiarios nostros una cum ijs quos vobis associaverimus, ad effusam nouæ diffe-finia capendum, quam Iohannes Talbot Comes Salopie arra-niauit coram vobis, per breue nostrum versus Willielmū Nu-gent Armigerum & Ioannam vxorem eius, de tenementis en Moyrath, &c. Ideo vobis mandamus, quod ad certos diem & locum quos ad hoc prouideritis, effusam illam capitatis, facturæ inde quod ad Iusticiam pertinet, secundum legem & consuetudinem libertatis nostraræ prædictar. Saluis nobis americiamen-tis inde prosequicibus. Mandamus etiam Vicecomiti nostro libertatis nostraræ prædictar, &c.

Per quel record, y infinitz autres de mesme le nature, troue en chescun Court & record al Dublin, est manifest, que le Seignior d Meth fuit un county Palatine, & ad ius regale en point de jurisdiction.

Ouster ceo, tout le Territoire de Ulster fuyt un county Palatine, & auoit tous les Prerogatiues auantdit, tant que

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que ceo discendoit al Roy Edw. 4. a prouer ceo vn record
hoys del Breninghams Tower fuit produce que remaiuent
les common Plea Rolles Ia, 3. Edw. 2. membr. 26. ou cest en-
trie est fait; Hugo de Lacy quondam Comes Ultonie tenuit
toram Ultoniam, exemptam & seperatam à quolibet comita-
tu, &c. Et placitauit in Curia sua omnia placita quæ ad Iusti-
ciarios, & Vicecomitem pertinet; & habuit propriam Can-
cellariam, absque hoc quod recipere returna alicuius Vice-
comitis.

Darrainement, le royll Libertie de Kildare auoit
continuance tantque l'attainder del Gerald countee de Kil-
dare, per Act de Parliament 28. Henr. 8. cap. 1. Mes a-
pres quant son fitz fuit estoze a son antient Inheritance,
y Letters Patents dated 1. Maij, 1. & 2. Phil. & Mar. co-
ment que touts liberties, priuiledges, honours, Jurisdi-
ctions, consulans de Pleas, &c. fueront regraunt a luy,
bnoye cest speciall exception fuit fait, Magna Curia de re-
cordo & libertate Comitatus de Kildare tantummodo excep-
tis. Ceux Records, & autres a mesme le intent, fueront
monstres auant a prouer le royll Jurisdiction & les royal
Seigniories des countees Palatine sen Ireland: q[uo]d re-
cords sont les sole authoritez queux auomus icy, comment
la Ley ad este preise auant ceux heutes, en cest Realme:
Car devant cest temps nul Reports ont este fait et pres-
serue des cases argues adiudice icy, come ad este vse en
Engleterre.

Et ilme sur consideration del nature & qualite del
des Prerogatives incident a ceo, fuit resolue, q[uo]d tel coun-
tee auoit vn royal Seigniorie cibien en Ireland, q[uo]d en En-
gleterre, & q[uo]d tel Royal Seignior poet bien auer vn Tenure
en capite de son person,

S'condement, sur consideration del nature & qualite del
Tenure en capite del Roy, fuit argue et resolue, que
cest Tenure en question, que fuit del person del coun-
tee Palatine de Wexford, estoant vnu en la Corone per act
de Parliament, sera ore vn Tenure en capite del Roy.
Car comment que fuit agree, que Tenure en capite est prop-
riement del person del Roy, ou del Corone del Roy im-
mediatement, pur ceo que le seruice incident a cest Tenure
fuit

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fuit primierment ordaine pur le defence del person del roy, & la Corone, & issint est proprement un Tenure en grosse, & nemy del honoz ou del Mannour, N. Bf fol. 5. k. Et comment que cest Tenure ne poet estre create per un subiect, esteant meement en condition dun subiect, car le Prince le fils eigne del Roy ne poet creater Tenure en capite, 30. Hen. 8. Dycr 44. b. Uncore, sicome le Roy per annexing del honoz ou Mannour al Corone, donc a ceo tel Prerogatiue que ses Tenantz de cest honor ou Mannour teignont de lui in capite, come le honoz de Raliegh, que fuit annex al Corone. 11. Henr. 7. 33. Henr. 8. Bf Tenures 94. Et issint fuit le honoz d Berkhamsteed en auncient temps, devant ceo que fuit annex al Duchy d Cornwall, 21. Edw. 3. 41. & en cest realm le Mannour d Trim est auxy annex al Corone, come appiert per lestatute 10. H. 7. cap. 15.

Et mesme le mannoz le Roy, per exempting et separting un countie, ou autre graund Territorie del Corone, poet faire le Seigniorie de ceo cy Royall et absolute, & issint qualifie le person del Seigniorie per communicating a lui les roial Prerogatiues, que les Tenures de son person serront Tenures en capite : & tel Seigniorie est checun county Palatine, que esteant hors del ordinary Jurisdiction de Corone, fait le Seignior en cest respect, plus hault que un ordinary subiect, & per consequence hors del Maximu rule de nostre Ley: que un subiect nest capable dun Tenure en Capite : car accordant al rule del Cisile Ley q est mise per Cassaneus in Catalogo gloriae Mundii, qui habent regale feodum sunt reguli quidam : et que ceo come est devant expesse, Bracton agreea, libr. 3. titul. de Corona ea. 8. Comites Palatij regalem habent potestatem in omnibus, salvo dominio domino Regi sicut Principi.

Fuit auxy resolue, que ne besoigne de necessity que checun capite Tenure soit ab antiquo, nient obstant les parols de Prerogatiua Regis cap. 1. que declare que le Roy auera pramer seistur de ipsis qui tenent ab antiquo de Corona. Car si le Roy a cest iour graunt terres, tenendum de lui sans expeller aucun service certaine, ceo est Tenure en capite de son person, 29. Henr. 8. Bf Livery 57. Issint poet le roy p expelle parol's reserver Tenure per service d Chivalerie de son person, que est auxy Tenure en capite.

Auxy

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Auxy n'est vn generall rule sans exception, que nul Tenant create originalment per vn subject poe deueigner vn Tenure en Capte. Car coment, que la ley soit issint come est tenus 30.Henr.8. Dier 1.44.b. que si mesnaltie soit tenus del Roy in Capite, & le Tenant tient del mesme per service del Chivaler, si ceo mesnalty escheat per mort del mesme sans heire, le Tenant ne tiendra en Capite del Roy mes per service del Chivaler come deuant: Issint si le ~~mesnalty~~ Purchase tel mesnalty, ou ad tel mesnalty per discent: Encore ou le mesnalty est tenus del Roy in Capite, & le tenaunce vient en lieu del mesnalty per le act del tenant, il tiendra, come le mesme teignoit, en Capit. 19.Eli. Dier 349 Seignior, mesme, & tenant, le Roy est Seignior, le mesme tient del Roy in Capite, & le tenant tient de luy in Socage, si le Tenant obtaine releas del mesme, ou forindge le mesme, il ore tiendra in Capite: Car volenti non fit jurius. Et serroit iniurious al Roy, s'il perdroit son Tenure in Capite p le act del Tenant, & aueroit en lieu d'ceo tant solement vn Tenure in Socage.

Daraignement, vn manifest difference fuit mise enter le case de Principallity de Gales, 17.Eliz. 345.a. & cest case de county Palatine. Car ou deuant le subiect de Gales al corone D'engleterre, home teignoit terre del Prince de Gales p service de aler en son guerre, ceo nefuit Tenure dont la common ley poe prender notice: Car ce Principallity de Gales ne fuit gouverne p la common ley, mes fuit dominion aper luy, & auoit ses proper leyes & customes: & pur cest reason quant ce pais fuit reduce desouch le subiect del Corone D'engleterre, tel Tenure q fuit del person d Prince de Gales ne poe deuenir vn capite Tenure d'l Roy D'engleterre: Mes chescun county Palatine cibien en Ireland q'en Engleterre, fuit originalment parcel del mesme le Realme, & derive de la Corone, & fuit touzsoit gouverne p la ley D'engleterre, et les terres la fueront temus p services et tenures dont la common ley pris notice, coment que le Seignior auoit severall Jurisdiction, et Seigniorie separee de la Corone: et pur ceo le Tenure in capite del countee Palatine, est de mesme le nature que le Tenure in capite del Roy, et issint estant deuenus al Corone sera Tenure in chiese del Roy,

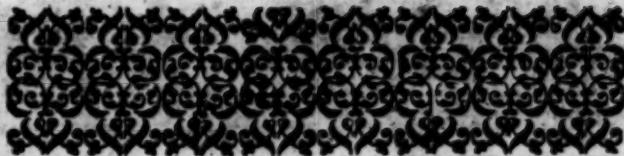
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Roy,

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Roy, come ceso fuit devant del county Palatine : & le reason &
cess difference appert pleinement, 19.H.6, fol. 12. Cest case
fuit argut per le attorney general pur le Roy, & par Io. Meade
& Edw. Fitz. Harris pur Prendergast.

Paschæ



Paschæ 9. Iacobi.

En le Common Banke.

Le casé de Commenda.

He quare impedit port y le roy vers Cy-
prian Horsefall & Robert Wale, sur speci-
all plea pleade per Wale le encumbent,
le Attorney del roy demurre en ley : &
sur ceo le casé en substance fuit tiel.

Le corporation à Kilkenny esteat pa-
trons dum Vicarage deins le Diocesse à
Dillay, ont present a ceo un Patricke Fynne, q sur lour pre-
sentation fuit admit, institute, & induct. Apres ceo durant
l'encumbercy bl dit Fynne, Adam Loftus Archevesque de
Dublin, & Ambrose Forth Doctor del Chastel ley esteant co-
missioners Delegates p granting & faculties & dispensati-
ons en cest realme accordant al statut de 28.H.8. cap.20.
per lour letters de Grace dar. 9.Octob. 33.Elis. grantont
al Io. Horsefall adonques Evesque de Dillay, que le dit E-
vesque vnum vel plura beneficia, curata, vel non curata, sui vel
alieni iuriis patronatus, non excedentia annuum valorē quadra-
ginta librarum, adtunc vacantia, vel quæ imposterum vacare
contigerint, perpetua Comenda titulo, adipisci, occupare, re-
tinere, omnesque fructus ad familię suę sustentatione conuer-
tere possit, iuribus siue institutis quibuscunq; in contrariū non
obstantibus : quel faculty ou dispensation fuit apres constituti

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¶ ratifie per letters patentes desouch le gerund Seale
de Ireland, acord date al dit Statute de 28.H.8.c.20. Apres
ceo, viz. 20. Maij, anno 38. Eliz. Paricke Fynne le Incumbent
mortuus, per que le dit Vicarage estant hold, & issint conti-
nuam hold per tempus le mesme, p que le Evesque, ad title
de collater a ceo y laps, le dit Evesque per vertue del dit fac-
ultie ou dispensation, adeprus est, occupauit, & retinuit, le dit
Vicarage perpetue Commande title, & pris les fruits de
ceo a son vse, jusques al i. ioye de Febr. Anno dom 1609.
a quel iour le dit Evesque mortuus. Apres que mort, le dit
Cyprian Horsfall ayant purchase le prochein auoidance de
de cest Vicarage, present le dit Wale, que fuit admis, ins-
titute & induct: Apres le roy presente un Winch, que este-
ant disturbe per le dit Horsfall & Wale, le roy port Quare
impedit.

Et si le dit evesque, quant il ad obtenu & occupy ce Vicarage p vertue de cest faculty ou dispensation, fuit fait p c perfect incumbent de ceo, issint que le esglise estant pleine
de lui, npi title y laps püssoit deuoluer al roay durant le
vie del evesque, fuit le principal point moue & debatue en cest
case.

Et en le argumentum de cest point, que fuit argue al barre
pymement p le sommell al common ley, apres per 2, ad-
uocates, bien appris en le common ley, & al Bench per
tous les Justices, chose furent principalement con-
sider per ceux queux arguont pur le clarke del roay.

1. Si le evesque püssoit, per aucun ley, avec s tenet et
benetice sans tel dispensation ou faculty.

2. Quel effect ou operation test faculty ou dispensati-
on auera per la ley.

Want al primer, ils teignont pur cleere ley, que un
Evesque, y le antient ecclesiastical ley D'engleter-
re, ne püssoit tener un autre benefice que ceste
deins son diocese: & sil auoit tislo benefice deuant son pro-
motion al evesqury, que ceo deuant hold, quāt il est create
en evesque. Et ceo est le antient ley D'engleterre, come
est souuentofte dit en le case del evesque de S. Davids 11.
Hear. 4. & 41. Edw. 3. 5. b. accord a ceo. Et le reason est,
pur ceo que le evesque ne poet visiter lui meisme, & estre
que

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que ad l' office de Soueraigne, ne retiendra l' office de Hub-
tect, come Hankeford dit in le dit cas de 11. Henr. 4. & sur
cest reason est dit en 5. E. 3. 9. que si Parson soit fait Dean,
le parsonage deuient void, pur ceo que dignity & benefice
ne sont compatible. Aucti nul Ecclesiastical person, per
les antient Canons & councells, puissot auer 2 Benefices
oue cure simul & semel, mes le primer fuit boyd per le pri-
sell del second; & ceo fuit l' auctient Ley del Esglise bse en
Engleterre long temps deuant l'estatute de 21. Henr. 8. que
fuit fait en assurmane de cest auctient Ley, come appiert
en Hollands Cas en le 4. part des Reports de le Setgny-
or Coke: & que ceo accordant les liuers de 24. Edw. 3. 33.
39. Ed. 3. 44. a. Et N. Br. 34. 1. Et le text del Canon ley, que
est le proper fountaine de cest learning, Libr. Decretal. titul.
de Prebendis & dignitatibus cap. de multa, proue ceo pleine-
ment, ou est dit, De multa prouidentia fuit in Lateranensi
Concilium prohibitum, ut nullus dineras dignitates Ecclesias-
ticas, vel plures Ecclesias parochiales reciperet, cōtra Sancto-
rum Canonum instituta. Et quia vero propter presumpciones
& quorundam cupiditates, nullus haecenus aut rarus de pre-
dicto statuto fructus prouenit: nos euidentius & expressius oc-
currere cupientes, praesenti decretus statutimus, ut quicunq; re-
ceperit aliquod beneficium curam habens animarū annexam,
si prius tale beneficium habebat, eo sit ipso iure priuatus, & si
forte illud retinere contendet, etiam alio spoliatur, &c. Circa
sublimes tamē & literatas personas quaꝝ maioribus beneficijs
sunt honoranda (cum ratio postulauerit) per sedem Aposto-
licam poterit dispensari. Et que ceo accord le Text intibr.
Decretor. causa 21. quæst. 1. in duabus Ecclesijs Cleric' con-
scribi nullo modo potest. Et illint est apparant, que l'Eves-
que, per nul ley, poer aueroa retainer cest Benefice deins
son Diocese, sans Dispensation, que est relaxatio iuris, & per-
mitt ceo deuse fait, que la ley ad prohibit deuant, 12. Hen-
ric. 8. 6. a.

S'condment ilz arguont, que le faculty ou dispensation
auantdit grant al Evesque d'Ossory fuit void a toutes
ententes: & si ceo prendroit effect bueope ceo ne fait
l'Evesque perfect encumbent à cest Vicarage, quant il prist
& occupie ceo esteant void p vertue de cest faculty, mes que

M 3

ceo

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ceo continue void, il dist que le Roy ad title a presentee pur
laps. Et p cleering de test point, 1. le original & l'incon-
veniente d Dispensations & non obstacles fuit consider. 2. fuit
enquire quant, & en tel mannoz l' Canon ley & Rome fait in-
troduce & admit en les Dominions del Roy D'engleterre: le
tel qd le roy ou le Pape puissent de iure dispencer ou le Ec-
clesastical ley en cest, & autres cas, devant le felans de
cest statute de facultes.

Et fuit dit, que le noz obstante fuit tenuent a le primement
vile en le court des Rome, p que Marsh. Par. prononcée un viz
envers la dit court, pur introducing test clause de Non ob-
stante: q ad estre un malbeys precedent, & mischivous al-
touts commonwealeys de Christendome. Car les temporal
Princes percevant q le Pape dispensoit ou les Cannons,
en imitation de lui ont voleur Prerogative de dispenser
ou leur penall Leyes & Statutes, ou duant ils ont cause
leur Leyes de stre religioustment obserue, come les Leyes de
Medes & Persians queux ne puissent estre dispensed with,
come est dit le liuer de Hester, vide le case de Penall Sta-
tutes, 7. Coke fol. 36. b. Et pur ceo un Canonist dit, Dispensi-
sio est vulnus, quod vulnerat ius commune. Et un aut dit,
que tous abuses seront reforme, Si duo tantum verba, viz.
Non obstante, non impedirent. Et Mat. Paris. in Anno Domini
1245. ayant recite certaine decrees fait en le councel de
Lions, qux fueront beneficials pur l'eglise D'engleterre, sed
omnia haec, & alia, dit il, per hoc repagulum Non obstante, in-
firmatur.

Ce pur monstret quant, & comment le Cannon ley fuit in-
troduce en Engleterre, & quel person de iure puissot dis-
penser ou le Ecclesiastical Ley en cest case, devant le
felans des Statutes de Faculties: fuit noate & obsecus, que
appes que l Evesque de Rome ad assune sur lui destree spi-
rual Prince ou Monarch de tout le Mounde, il ad attempt
auxy de doner Leyes al tous Nations, come un real mark
de son Monarchie. Mes ils sachant bien quod vbi non est
condendi authoritas, ibition est parandi necessitas, ne impose
les Leyes al primes, peremptoriam sur tous gentz sans
distinction, mes offrir eur timide & precatio. Et pur ceo
primement il causast certaine rules de stre collect pur le
gouvernement del Clergy tantum, quex il appell Decreta, &
nomi

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nemis leges vel statuta. Cœux Decrees furent publish en l'an 1150, que fuit durant le raigne del Roy Stephen : et par ceo ou le Seignior Coke adnoate en le Prefactus al. 8. part de ses Reports, Quod Rogerus Bacon, frater ille per quam eruditus, in libro de impedimentis sapientia, dicit, Rex quidem Stephanus allatis legibus Italiae in Angliam publico edictio prohibuit, ne ab aliquo detineretur, fuit probablement conjecture, que ceo est destre intend a ceut Decrees, queux furent adonq's nouvellement compile & publish. Untoz ceut Decrees eteant receue & obserue p le Clergy des Western Esglises tantum (car le East Church ne vngues receuroidt aucuns de ses rules ou Canons : Kellawayes Reports, 7. Henr. 8. fol. 184.) L'Evesque de Rome attempt auxy de trahir le Laitie al obedience de ses Ordinances, p degrées : & a cest intent, priserment il propoind certaine rules ou Ordinances pur abstinençe ou lors d fasting, dest obſeue per le Laity cibien que per le Clergy , queux furent sur le primer Institution, appell per un gentle paroll, Rogationes , come Marsilius Pat. libr. Deſcenſor. pacis, part. 2. cap. 23. ad obſeue, & inde come semble, le semaigne de abstinençe p chein devant le feast de Pechecost fuit appell le Rogation weeke, cest temps de abstinençe eteant appoint al commencement per tel Ordinance que fuit appell Rogatio, & nemis præceptum vel statutum. Quant les lay Homes de lour deuotion auoent receaue & obey ceut ordinaunce d'abstinençe donques l'Evesque de Rome passoit ouster (de vna præſumptione ad aliam transiuit Romanus Pontifex , cœ Marsil. Pat. la dit) & fesoit plusors rescriptes, & ordrees, per nomen Decretalium, queux furent publish en l'An. 1230. q fuit Anno 14. H. 3. aut eo circiter vid. Math. Paril. histor. magn. 403. & ceut furent fait de lier tout le laytie, cibien Roiengne Princes, come lour subiects, en tels choses qui concernont lour ciuill & temporall estates. Come que nul lay home aueroit le donation del Ecclesiastical benefice : que nul lay home marrioit deing certain degrées, ouster lez degrées limit per la Leviticall ley : que touss enfants nees duant espoisles serront adiudice apres les espoisles legitimate, & capable de temporall inheritance : que touss Clerches serront exempt de secular power : & autres de mesme le nature,

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Mes ceux Decretalls esteant publish ne fueront entierement & absolulement receue & obey en aucun part de Christendome, mesmelement en le temporall Territorie del Pape, que est appel per les Canonists, Patria obedientia. Mes del autre part, plusors de ceux Cannons fueront tout ousterment reiect & disobey en France & Engleterre, & autres Christian Realmes que sont appell Patria consuetudinaria. Come le Canon que prohibuit le donation des Benefices per manum laicam, fuit touts foits disobey en France, en Engleterre, le Realme de Naples, & divers autres countries et commonweales. Et le Cannon de faire les enfants legitimate, queux sont nees devant espousels, fuit specialment reiect en Engleterre, quant en le Parlement tenuz al Merton, omnes Comites & Barones vna voce responderoient, nolumus Leges Angliae mutari, quae hucusque vicitur sunt, &c. Et le Cannon que exempt clerks de secular power ne fuit vnges pleinement obfue en aucun part de Christendome, Kellaway 7. Hen. 8. 181.b q est un infallible argument, que ceux ordinationes nauoient lour force per aucun autoritie que le court de Rome ad de imposer Leyes sur tous Nations sans lour consent : Mes per le approbation & usage del People, que ceux ad receive & use. Car per mesme le reason que ils puillont reiecter un Cannon, ils puillont reiecter tous les autres, vide Bodin. lib. 1. de Rep. cap. 8. ou il dit, que les Roys de France, sur erection de toutes Universites la, ont declare en lour charters, Que ils boillent receiuer le Profession del Ciuite & Canon leyes pur uer a lour discretion, & nemy destre oblige per ceut Leyes.

Mes quant a ceux Cannons queux fueront receue, accept, & use en aucun Christian Realme ou commonweale, ceux, per tel acceptation & usage, ont obtaine le force de leyes en tel particular Realme ou State, & sont deueigne part des Ecclesiastical Leyes de tel Nation. Et tantz ceul que fueront embrace, allowez, & use en Engleterre fueront fait per tel allowance & usage, part de les Ecclesiastical leys D'engleterre, per que l'interpretation, dispensation ou execution de ceul Cannons, esteant denenus leyes D'engleterre, apperteignoit solement al Roy D'engleterre, & ses Magistratz, deins ses Dominions, & si & ses

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à ses magistrats avoient sole iurisdiction en tiels cas, & le evesque de Rome ne avoit rien à faire en la interpretation, dispensation, ou execution de ceulx leyes en Engleterre, comment que fuerot valablement deuise en le court de Rome. Nient plus que le chiefe magistrate del Athens ou Lacedemon puissoit clamer iurisdiction en le antient city de Rome pur ceo que les leyes de les 12. Tables fueront apprompt à import de ceulz cities de Grecce. Et nient plus que le master del New colledge en Oxford auer a command ou iurisdiction en le Kings colledge de Cambridge, p' ceo q' les priuate statutes p' que le Kings colledge est gouverné, fueront, pur le plus part, borrow & prise hors del luer de foundation del New colledge en Oxford. Et certes per coste reason, le Emperoz puissoit clamer iurisdiction en Maritime causes deins les Dominions del Roy D'engleterre, p' ceo que nous auons, de long temps, receue & admis le Imperial ley pur le determinac de tiels causes, vide Cawdries cas en le 5. part des Reportis de le Signior Coke: & Kellawayes Reports, 184.a.

Uncore le evesque de Rome perq'uant que plusors de ses Cannons fueront receue & vle per diuers nations de Christendome, per colour de ceo, il clamoit de auer ecclasticali jurisdiction en cheste Realme et Statute, ou les Cannons fueront receue, & misoit les Legates ou seuerall commissions, en seueral realmes de Christendomi, de oyer & determiner causes, solonque ceulz canons: queux canons, comment que le Pape, ne ses ministres, sur le ppter benting & vitterance, n'oseront appellez leyes. Ne committerent crimen laſſe Maicstatis in Principes, come Marsil. Par. ad biſ obſerue libr. Defensor. Pacis, part. 3. c. 23. q' dit auxy la, que ceulz canons, entant que sont fait par le Pape, neques sunt humanae leges, neque diuinæ, sed documenta quædam, & narrationes: Uncore quant il perceinoit que ceulz Cannons fueront receue, allow, & vle en part, per seuerall nations, il compile eux en volumes, & appell eux, Ius Canonicum, & ordaine que seront lyes, & expound en publiche Schooles et Univerſities, com l' Imperial ley fait lie et expound, et commaund que seront obey per tous Chrétiens sur paine de excommunication, et contend soient faitz

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foits de mettre eux en execution per coactiu power, & assume sur lui de interpreter, et abrogater, et dispenser oue ceux leyes en tous les Realmes de Christendome a son pleasure : issint que les canonists ascrivont a lui cest prerogative, Papa in omnibus pure positiuis, & in quibusdam ad ius diuinum pertinentibus dispensare potest, quia dicitur omnia iura habere in scrinio peccoris sui, quantum ad interpretationem & dispensationem libr 6. de Const. cap. licet.

¶ *Put le temps Anno 25.E. 1.Simon bn Moigne de Walden comenceroit de lier le Canon ley en le bniuersite de Cambridge , vide Stow, & Walsingham en mesme le an 2 le Manusc. libr 6. Decretal. en le Library Noui Coll.Oxon. ad ce inscription in fronte : Anno Domini 1298. que fuit le An 26. E. 1.19. Nouembr. in Ecclesia fratum Prædicator, Oxoni fuit facta publicatio lib. 6. Decretal. p que appiert quaunt le canon ley fuit introduce en Engleterre. Mes le iurisdictiōn que le Pape p colour de geo claimoit en Engleterre, fuit bn meere usurpation, a quel les Royes D'engleterre, de temps en temps, fesoient opposition jusques al temps del H. 8.*

Et certes le Judgement del Parliament expresse en le Preamble de cest statut v faculties est notable a cest purpose. Ou est recite que le bnesque de Rome ad deceine & abuse les subiects del Coronē D'engleterre, Pretending and persuading to them that hee had full power to dispense with all humane Lawes, usses, and customes of all Realmes, in all causes, which bee called Spirituall : which matter hath beene usurped and practised by him and his predecessours, for many yeares, to the great derogation of the Imperiall Crowne of England. For whereas the sayde Realme of England recognising no superior vnder God, but the King, hath beeene and yet is, free, from subiection to any mans laws, but only to such as haue beeene devised, made, and ordained within this Realme, for the wealth of the same, or to such other, as by suffferance of the king & his progenitors, the people of this realm haue taken at their free liberty, and by their owne consent, to be vsed among them, and haue bound themselves by long use and custome to the obseruance of the same, not as to the obseruance of the lawes of any forein Prince, Potentate, or Prelate, but as to the accustomed and antient lawes of this realme originally

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originally established as lawes of the same , by the sayd suffrage, consent, and custome , and not otherwise : it standeth with naturall equitie and good reason , that all such humane lawes made within this Realme, or induced into this Realme by the sayd suffrage, consent, and custome , should bee dispensed with, abrogated, amplified, or diminished by the King and his Parliament, or by such persons as the King & Parliament should authorise, &c. vide 2 1. H. 7. 4. a. ou est dit, que certaine priests fueront deprive de lour benefices per Act de Parliament en temps R. 2.

Per que s'uit conclude, que le Roy D'engleterre, & nemp le Pape, devant le fesans de cest Statute de faculties, puissot de iure dispenser oue le ecclesiastical ley en cest, & autres cases. Car coment que plusors de nostre ecclesiastical leyes ont este primitivement deute en le court d' Rome, vnozce ceux esteant establish & confirme en cest realme per acceptance & usage, sont oze deuenus English leyes, et ne serront amplius repute Romish canons ou constitutions. Come Rebuss parlant de regula Cancellarie Romanæ de verisimili noticia : hæc regula, dicitur, vbiique in regno Franciæ est recepta, & est lex Regni effecta, & obseruatur tanquam lex regni, non tanquam Papæ regula : & Papa eam reuocare non potest.

Et pur ceo, ecclesiastical ley que ordaine que quauant home est create en euesque que tousz ses inferiorz benefices serront boide, est souuentfois dit en le case del Tresque de Saint Davids 1 1. Henr. 4. descre le antient ley D'engleterre. Et 29. Edward 3. 44. a. en le Case del Præbend de Ongate, est dit, que le constitution que ouste pluralitez commenceoit en le court de Rome, vnozce un esglise fuit adiudice boide en Banke le Roy pur cel cause. Per que appiert, que depuis que cest constitution fuit receue & allowe en Engleterre, ceo fuit deuenus ley D'engleterre. Vide statutum de Bigamis cap. 5. ou le Roy & son Counsell en Parliament declaront coment un Canon fait en le conseil de Lyons serroit interpret & expound. De Bigamis quos Dominus Papa in Consilio suo Lugdunensi omni priallegio suo Clericali priuauit, per constitutionem inde editam, & unde quidam Prælati illos, qui effecti fuerunt Bigami ante prædictam constitutionem, quando de felonie rectati fuerunt, tanquam

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quam Clericos elegerunt sibi deliberandos : concordatum est & declaratū, corā Rege & Consilio, quod constitutio ista intelligenda sit, quod siue effecti fuerint Bigami ante prædictam constitutionē, siue post, de cætero non liberentur Prælatis, sed fiat de ijs iustitia, sicut de laicis.

Uncore tous les ecclesiastical leyés D'engleterre ne fueront deriné & approupt del court de Rome. Car long temps deuant que le Canon ley fuit authorise & publish (q̄ fuit depuis le Norman Conquest, come deuant est monstre) leg antient Royes D'engleterre, viz. Edgar, Athelstan, Alfred, Ed. le Confessor, & auters, sunt, que le aduise de lour clergy deing le Realme, fait diuers ordinances pur le government del esglise D'engleterre : & depuis le Conquest, diuers Provincial Synodes ont estre tenus, et plusors constitutions ont estre fait en ambideux realmes D'engleterre, & Irelan̄d : tous queux sont part d nostre ecclesiastical leyés a cest tour. Vide le Chart. de William le Conqueror dat. An̄ Domini 1066. irrot. 2.R.2. enter les Charters in Archiu. Turris London. pro Decano & Capitul' Lincoln̄ Willielmus Dei gratia, Rex Anglorum, &c. Sciatis, &c. quod Episcopat̄ leges, quæ non bene, nec secundum Sanctorum Canonum præcepta, vsque ad mea tempora in regno Anglie fuerunt, communi consilio Episcoporum meorum, & cæterorum Episcoporum, & omnium principum regni mei emendandas iudicau. &c. vide ¹¹ Girald. Cambren. libr. 2. cap. 34. en temps Henr. 2. Un Synode del Clergy de Irelan̄d fuit tenuis al Castle, en que fuit ordaine, Quod omnia diuina, iuxta quod Anglicana obseruat Ecclesia, in omnibus partibus Hybernia amodo tractentur. Dignum enim & iustissimum est, ut sicut dominum & Regem ex Anglia diuinitus sortita est Hybernia, sic etiam exinde viuendi formam accipient meliorē.

Et pur ceo les Royes D'engleterre, de temps en temps, en chescun age deuant le temps del Henr. 8. ouint vse de graunter dispensations en causes Ecclesiastical. Car ou la ley del Esglise est, que chescun spirituall person est visitable per le ordinary, le Roy William le Conquerour per son charter exempt le abbey de Battell de visitation & Jurisdiction del ordinary, en ceux expresse parols, sitque dicta Ecclesia libera & quicta imperpetuum ab omni subiectione Epif.

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Episcoporum, & quarumlibet personarum dominationes, sicut Ecclesia Christi Cantuariensis, &c. per que si dispense oue la Ley del esglise en cest case, vide libr. de vera differentia regie potestatis & Ecclesiasticae, edit. 1534. ou tout le dit chart est recite alarge. Et tiel charter fuit graunt al abbey de Abingdon p le roy Kenulphus, i. H. 7.23. & 25. & Cawdreyes case 5. fol. 10.2. Illint chescun appropriaition compris en ceo un dispensation al person impersonnee, hauer & retenir le benefice en perpetuitie, come appert en Grendons Case, Pl. Comment. 503. en qil act le roy p le common Ley fia tout foiz actorz, non seulement come supreame patron, come est auxy note en Grendons case, mes anxy come supreame Ordinary. Car le Roy sole sans de Pape poet fait appropriaition, 7. Edw. 3. Fitz. Quare impedit 19. illint en le dit case del evesque d S. Davids, i. Hen. 4. fol. 213. b. Hankford. misst est question si le Roy vst graunt, duant le creation d l evesque, que il purroit tenir un benefice & l eveschrie ensemble, s come l Apostle ad fait, ne sera my le graunt boni & Norton & Skrene bon assetz. Illint en 11. Hen. 7. 12. a. en le case de malum prohibitum, & malum in se, est la tenus, q l roy poet dispencer oue un Priest d tenu 2. benefices, & oue un bastard que il sera Priest, nient obstant les ecclesiastical leys qui sont al contrarie. Et sicome il poet dispencer ceux leys, assint il poet pardon tous offendres encounter ceux leyes, et son pardon est bar est tous suits, p salut animz, ou reformatione morum, & tous suits ex officio en l ecclesiastical court, Halls case en l 5. pt d les Reports d Seignior Coke fol. 51.

Cest point donques esteant illint proove, viz. que le Roy D'engleterre solement puissot de iure dispencer oue l Ecclesiastical ley en cest case, & autres deins les Domintions devant l esfans del Statute d faculties, l effect & validitie de cest facultie ou dispensation esteaunt graunt ut supra fuit considerer. Cest faculty fuit graunt per commissioners autorise p Letters Patents del Royne Elizabeth. de grant faculties & dispensations en ce realme accordant al Statut d 28. Henr. 8. cap. 20. enacted en cest Realme. Per quel Act tiels commissioners ont mesme l autho-

N

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L'autorosity que l'Archevesqz d'Canterburie ad en Engle-
terre p force d' Statut d 25. Henr. 8. cap. 2 i. enacted en En-
gleterre. Quel Statute d 25. Henr. 8. done authority al Ar-
chevesque d Canterbury d graunt toutes faculties & dispen-
sations, &c. p causes nient contrary ou repugnant al Sain-
tes Scriptures & ley d Dieu qz ont vte en temps paravant
destre ew & obtaine en la Cour de Rome: & toutes autres fa-
culties & dispensations qz serront p le honour del Roy, & pro-
fit d realme, issint qz soient p causes que ne sont repugnant
al Leyes de Dieu. Et que toutes actes destre fait & execu-
ted accordant al Lenoz d tielx faculties & dispensations,
sront firme, & remaineront en force nient obstant aic for-
rein Ley, Decree, Cannon, ou Decretall, &c. p q appiert,
quel power & authority ceux commissioners auoent d grar-
ter faculties & dispensations. Mes ne appiert qz ils auoent
power d grant aucun facultie ou dispesation en tel forme
come l facultie supra est plead destre grant al evesqz d Osso-
rie. Car cest faculty nest garrant p le dit statut, p 2 princi-
pal realsons.

1 Pur ceo que nul tel facultie ou dispensation fuit ac-
cumente destre graunt en le court d Rome. Car les faculties
graunt la, fueront daus forme, & different de cest faculty in-
diuers materiall points: issint que cest faculty, si ceo ad est
obtaine en le court de Rome, ad est boyd p le rule del Can-
non Ley.

2 Admit qz tel faculty ad vte destre grant en le court d
Rome, vnoce le cause p qz cest graunt est repugnant a les
saintes Scriptures & ley de Dieu, & p consequence, nest, en as-
cun sort garrant p le dit statute.

1 Pur le forme de cest faculty qz est tel, viz. que l eves-
que d Ossoire vnum vel plura beneficia, curata vel non curata,
sui, vel alieni iuris patronatus, adtunc vacantia, vel qua impos-
teriorum vacare contigerint, & non excedentia, &c. perpetuae
commendae titulo adipisci, occupare, retinere, omnesque fru-
ctus ad familiez suæ sustentationem convertere possit: iuribus
sive institutis quibuscunq; in contrarium non obstantib^z. Ceo
est trop general, & pur ceo est irregular, & fault certain ma-
teriall clause^s, queux fueront toutstotz mise en tiels fa-
culties esteant graunt & obtaine en le Court del Rome.

Cat

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Car in tielx facultes grant la fuit, toutsoit s vn particu-
lar derogation, ou non obstante del droit du patronage des
lay patrons, et del droit del Roy y expresse nosme, ou l pa-
tronage appartient a lui au tems que le faculty ad esté boud
(car p le Canon ley les lay patrons doent esté appellé du
leur consent s in tous cases de cest nature et si tel particu-
lar: Non obstante ne fuit add in le faculty, vn autre clause
fuit mise, viz. Dummodo patronoram expressus accedat
consensus. Auty p vn autre clause, authority fuit toutsoit
done al officiaill, ou Archdeacon, ou autre ecclesia-
stical Minister de metter cest y a que le faculty est grant in
possession du benefice cum accederit. Ou in cest faculty
graunt al Euelx d'Orsay, et est nul particular Non ob-
stante ou derogation del droit de patronage, ne du Roy, ne
duz autres lay patrons, ne aucun mention fait de consent du
Roy, ou del aucun autre patron. Auty p cest faculty ce-
st y que ad obtain ceo ne besoigne desté mise in possession p
aucun Ecclesiastical Minister, mes il poet, come semble,
prendre le possession del aucun benefice que sera boud, de
loy mesme, immediatment, & quasi per saltum, sans præsen-
tation, institution, ou induction, et sans aucun autre formall ou le-
gall collation.

Et a prouer q l's clauses auantdit fueront toutsoit
mise in tielx facultes grants ou pchase in le court du Rome,
Rebusus de Praxi beneficiorum (vn tresbon authority a ce
purpose) fuit vouch: ou traitant alarge de Papæ prouisio-
nibus, il dit, quod cum Iuspatronatus laicis a iure reseruatū sit,
ob id Papa non solet conferre beneficia sub iure patronatus lai-
corū existentia, nisi cum speciali derogatione iurispatronatus
laicorū, & nō est suæ intentionis, ut valeat collatio nō facta spe-
ciali derogatione, ut dicit Io. Andreas (q fuit vn antient ca-
nonist long temps devant le Statute de faculties) se de hoc
vidisse Bullā directā Prælatis Angliae (quod nota) alias pro-
uicio Papæ tanquam subreptitia non valer, quia citra intentionē
Papæ. Et ouster il dit, quod clausulæ generales derogatoriae
non sufficiunt, ad derogationē iurispatronatus laicorū, etimasi
adesseret clausula motus proprij, & generalis clausula, non obsta-
te (come est en cest faculty) aut clausula, ad quamcunque
collationem, præsentationem, vel prouisionem pertineat, quia

¶ 2

illa

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illa verba inteligerentur de Clericis, non de laicis. Il aury dit, quod specialis mentio Regis fieri deberet, quia si prouisio a Papa facta fuerit non obstante Iurepatronatus laicorum, si spe-ctaret ad regem, non valeret prouisio, & Rex se opponere pos-set. Uncore il dit, que cest special non obstante ne besoigne, il ce conditionall clause soit mise en le prouision, dummodo patronorum accedat consensus.

Et est desre note, q commenda est quædā prouisio, & pur ceo Gomes in regula de Idiomate, dit, qd commendare est p-uidere, & q commenda comprehenditur sub quibuscunque re-gulis de prouisione loquentibus.

Et que per le canon ley le cōsent del patron est requisite, ou benefice est done en commendam, vide lib. 6. Decretal. cap. Nemo, oule Glosse dit. Ad commendā vocabitur patro-nus, & si qui alij ex tali commenda lāduntur. Et in legitimis constitut. Othobon. titul. de commendis (qux constitutiōs sont annex al Linwoods prouincials) est dit, quod consen-sus patroni ad huiusmodi commendā requiritur. Et p mesme le reason en chescun faculty, ou licence grant y le Pape de faire permutation, vniōn, ou apro priation des esglises, leur parols fueront ad tout gfoits, vocatis quorum interest que entend p̄ncipalment del patron come Rebuff. & les auts canonists diont, q que vniōn & appropria tion ne serront fait sans assent del Patron est manifest per nostre liuerg, viz. 11. H. 7. 8. 6. H. 7. 13. 46. Ass. p. 50. Ed. 3. 26. 40. Ed. 3. 28. Grendons case Plow. Com 498.a.

A prouier auxy, que en chescun tiel faculty graunt per le Pape de auer & reteiner beneficium vacans seu vacaturum, un clause executori fuit tout gfoits mise, per que le official, ou Archdeacon, ou autre ecclesiasticall minister fuit autho-rise de metter cestby que ad tiel faculty graunt a lui en co-poz all possession de tiel benefice, Rebuffus fuit cite, ou il de-clare le forme de cest faculty, & la il dit quod intrusus dicitur, qui intrat beneficium propria autoritate. Car il ne enter en loyal manner, & ideo non intrat per portam. Et accordat a ceo Hankford, dit, 11. H. 4. 229.a. q si home ad obtaine Bull de prouision, sil ne ad executoz de son Bull, queux lui pur-ront mettre eins p authority, & per course del ley, ne sera adiudice eins p prouision del Pape, mes intrudoz.

Per

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Per que appert que cest faculty graunt al Euesq d Ossory batant en divers matieral pointz blome des facultes graunt en l'Court d Rome devant l' feulans d Statut d facultes, pur ceo nest garant y le dit Statute en cest respect.

Admit que tel faculty fait vse & accustomme destre graunt & obtaine en le Court de Rome, bnoze, nest garant per le Statute, pur ceo que le cause de cest faculty nest agreeable en al saincte Scripture & Ley de Dieu. Cat ou l'expresse text d Scripture est 1. Timoth. cap. 2 quod oportet Episcopum esse Doctorem & Hospitalarem : experientia docet (dit Inocent. 6. Extravagan. ca. Pastoris) occasionem commendarum, Cultum diuinum minui, curam animarum negligi, hospitalitatem consuetam & debitam non seruari, ruinis aedificia supponi, &c. Et ou est dit en mesme l' Text, que Evesque sera vnius uxoris vir, per que est entend (come lez Cannonis expound ceo) que si auera fonsque un Ecclusey, ou un Curte, ils diont que per commendam Bigamia contrahitur in Ecclesia. Et pur ceo un bon & pious Evesque disoit, quant un autre Benefice fut offert a luy a tenir en commendam absit, & cum sponsa habeam concubinam.

Mes p nostre Ley, un faculty graunt & execute en tel forme come l' faculty graunt ut supra al Evesq d Ossory est faitoit manifest tort & iniury aux layes Patrons. Cat est expresse licence done al Evesq d fait usurpation sur layes persons, & d tollet l' benefic d lour Abououfang esteant lour droit d' inheritanc. Et ceo esteant tort est malum in se, & encontre la ley de Dieu : qd ceo ne puissot estre dispesed without l' Statut, ne p l' Roy, ne p l' Pape, & ore tel faculty ou licenc nest confirme ne intend autre confirme p l' Statut de facultes.

Et pur ceo quant al Roy est dit, 11. Henr. 7. 12. 1. que le Roy ne poet dispencer que aucun d fait iniury en le hault chamin, & sil ceo fait, tel dispensation est boid, & 8. Hen. 6. 19. Roy ne poet graunt que si home fait trespass a moy, que leu fauera action vers luy : ou que home sera son Judge demesme. Et pur ceo est souuentfoirs dit en nostre mises, que prerogative del Roy ne faira tort al subiect

N 3

13. Ed.

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¶, post l'offre ou
stat. requise chose n'esse
ment des f.

13. Edw. 3. 8. 4. 35. H. 6. 29. b. 5. Coke 5. Knights Case.
Iuxi comment que le Roy poer dispender oue son Statute q
mobilis indifferent chose desle fait, vnoz il ne poer chang
le common Ley p son plement, 37. Hen. 8. Br. stat. 100.

(6. Henr. 7. 4. Et ne poer dispender oue le common Ley oue
Non obstante 4. Coke 35. Bzom's case. Et quant au Pape
est souuentfois dit en le dit notable case del Evesque de
Saint Davids, 1. Henr. 4. q. leg. Bulls del Pape ne poer chan
ger la Ley D'engleterre. Et ceo accord oue les rules h Canon ley. Non valer declaratio Papæ vel Regis in præjudicium
tertij. Rebussus in praxi beneficiorum titul. de non tollendo ius
quisitum. Et alibi il dit, per clausulam motu proprio, &c. Pa
pa non tollit ius tertij. Talis presumitur mens Papæ conceden
tis, qualis est juris. Donatio Principis intelligitur, sine præjudicio
tertij.

Si donqz tel faculty, ou dispensation en tel forme ne
puissoit estre grantee per le Roy, ne per le Pape, deuant le
Statute de facultes, certes les fesoiz de cest Statute ne
vnges entendoient de faire aucun Faculty bone, que fuisse
sot unreasonable, & encounterer common droit devant le
Statute. Come les Statutes queut confirmant les
customes de London ne confirmant aucun unreasonable
cusement que ad. estre ble en London. Et tantz come Lit.
dit 165. a. le Statute de Gloucester sera entend. que pro
uide, que si baron esteant seissie de terre en droit sa femme
alien la terre oue garrantie en la vie del feme, ne sera
barre al heire del feme, si nul fine soit levie en le court del
Roy : ceo est destre entend a expound si nul loiall fine soit
droiturellement levie en court del Roy en que le Baron
& feme soyant. Car si fine oue garrantie soit levie par
le Baron sole sang sa feme e'ne fait barre al heire.

Mes pur faire cest point vnoz plus cleare, le nature &
difference de les Commenda's warrantable p l. Cannon
Ley seront declare & consider. Et quant a ceo, fuit
dit quod commendata Ecclesiaz, e'rien forsayz commendatio Ec
clesiaz ad custodiem alterius. Et pur ceo Decret. causa 1. q.
1. tui. qui plures, le Glossa dit, commendare nihil aliud est
quam deponere. Cest commendata seu commendatio Eccl
ez. est diuers, solonque le nature del Esglise, et le limi
tation

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tation ou continuance de la commenda. Car commenda poeſt étre Ecclesiaz Curat̄, vel non Curat̄, a poeſt estre temporanea, viz. pur temps certaine come que 6. mois, ou perp̄etus, viz. durant le vie del commendatory. Eglise oue curé ne poeſt étre done en commendam, ſi ne soit par evident necessit̄, ou profit̄ del Eglise, viz. de ſupplieſ le Cure tantque promiſſion ſoit fait del ſufficient̄ incubent. Et pur ce ſuit prouide per le Counſell de Lyons, que un poerothiaill Eglise ne ferroit done en commendam n̄i ex evidēti necessitate vel utilitate Ecclesie, & quod talis commendada vitra ſemestris temporis ſpacium non duraret, & qđ fecus factum fuerit ſit irritum ipſo Iure, &c. 6. Decretal.c. Nemo. Mes beneſice ſans cure poeſt étre done per le Canon Ley pur luftentation del Commendatory vel ad mensam. Et p̄ celiſſe leḡ Canonis dicit, quod Commenda eſt quaſi comedenda, quia Ecclesia quaꝝ traditur in commendam quaſi comeditur & deuoratur. Et tiel beneſice proprieſt poeſt étre done en perpetuam commendam. Summa ſummar um titul. Commenda, articul. 1. & 2. Per q̄ appiert, q̄ l̄ dit bicarage eſteant beneſice oue cure ne poeſt étre done en perpetua commendā p̄ l̄ Canon auantdit. Et comit q̄ l̄ Glosse ſi l̄ dit Canon. 6. Decretal.cap. Nemo, dicit quod iſta conſtitutio non comprehendit Romanum Pontificem, ideo Romanus Pontifex poeſt in perpetuum commendare, hincor appiert auty. 25. q̄ n̄ eſt monſtruant, q̄ l̄ Pape ne vloſit ne puillot doni comedā en tiel form come l̄ faculty ou dispensation auantdit ē done, p̄ q̄ ſuit conclude q̄ celiſſe faculty ou dispensation fuit boyd a toutes intenſes.

MEs admit que celiſſe faculty prendroit effect & ferroit perpetua commenda, hincor ceo ne fayt l̄ Eglise ſans ſuperpetuum vicarium, ilſint q̄ ſoit gfeet. Incubent del dit Eglise, & que l̄ Eglise ſoit pleine de lui durant ſon vie.

Car per le rule de noſtre Ley, un Eglise ne ſerra dict pleine vers common pſon ſi l̄ incubent ne ſoit eins per presentation, institution, ou p̄ formal collation q̄ amount al presentation & institution. Mes vers l̄ Roy ſerra mul plenatty ſans presentation, institution, & induction, 22. Hen. 6.

27.44.

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27.44. Ed. 3.3. ¶ 1. Henr. 4.7.24. Edw. 3.30. Et pue celi reason du pion empêonnee ne plendra plenatty des estrange patens, pur ceo que il ne deute éins per presentement, 38. Henr. 8.20.39. Henr. 8.21.46. Ali. pl. 4. 14. Henr. 8.30. Vide libro 18 Statute Westm 2. cap. 5. p que celi que plead plenatty Ecclesiæ doet monstret à quel presentement. Et en Hecker's Case, 13. Henric. 8. 12. ou maldict del Hospital d'as pietz lui mesme al Esglise, à que l' Abundon ou appert al dit Hospital, comment que l' Ordinacie ad lui admis, ou ceo fuit adiudice la, que l' presentation esceant bold, nul plenatty fuit gain p lui en l' dit Esglise: à fortiori en cest cas, celi Vicarage ne sera dit plein d' Evesque d' Ossory, ou il mesme est, & pris possession d' e, sans estre tenuz preser, institut, ou induit, & sans ordinary collation, ou aucun legal ceremony.

Et p ceo p l' rule d' Canon ley auxi, cest q' vient eing per commendam non est Praelatus, sed procurator tantum, & est nisi custos, seu administrator, & jus in ecclesia non habet, &c. Decretal. cap. Nemo de constituit. Othoboni cap. de Commendis Ecclesiistarum fol. 65. Et one ceo accord, 27. Henr. 8. 15. ou est dit q' Cardinal de Yorke ad l' Abby d' S. Albans en cōmandam, à hincor ne fuit Abbe.

Unto celi difference fuit agree, q' si clerks soit present al benefici que tene, & soit admit, institute, & induct a ceo, il sunt q' l' Eglise soit plein à lui, si abz il soit plein al au benefice incompatibil, ou elect al Evesq, & devant q' il soit institut al second benefice, ou soit create en Evesq, il obtain faculty ou dispensation à retair l' primitif benefice perperu comède titulo: q' est durant son vie, celi faculty ou dispensation sera à telle ffect, q' l' premier benefice ne sera bold p t acceptante al second, ou p l' promotion al Evesq, mes que il remaintra plein & perfect Incumbent del premier benefice durant son vie.

Et le faculty ou dispensation en celi cas ne fait astur Mort ou iniury al Patron. Car le Patron ne presenteraoit arrete tant que le prochein avoidance, & l' Eglise en celi cas ne deurent boires bold, per reason del dispensation, que preuent l' avoidance. Vid. Rebuff. de praxi beneficiorum. 3. part signatur. Si Papa dispensat cum promoto id Episcopatum

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Episcopatum ut retineat sua beneficia, poterit retinere etiam
que sub patronatu laicorum sunt, quia non agitur de praedi-
cio Patroni, cum non vacet beneficium, q ad estre adiudice dit
sl, in Decis. Rotz. 331. Car la ley que ordaine q le prmer
benefice sera void p acceptance del second, poe estre dis-
pensed with, & issint est de la ley que ordaine q quant home
est fait evesque, que ses autres benefices seront void, come
Thrinig dit, 11.H.4.213.b. Car ceux leyes fneront faits
per ecclesiastical policy, & p ceo m le policy poe dispenser
oue ceux leyes. Mes la ley que prohibit Tort ou iniury
al tierce person, ne poe estre dispensed with p les reasons
auantdit. Et pur ceo le benefice q est vnofoit void, & le pro-
chein auoydance de ces eschue al Patron, ne poe estre pris
occupy p vertue del aucun tel licence ou faculty. Et ac-
cordanct a cest difference sont plusors cases ruled in nostre
liuers.

11. Henr. 4.170.213.229. en le notable case del evesque
de S. Dauids souuentofit cite deuant, est resolute p Thri-
ning, Hankford, & le melior opinion de cest liuer, que quant
vn prebendary de Sarum fuit elect al Evesquery de Saint
Dauids, & deuant que il fuit create en Evesque, il obtaine
dispensation del Pape de retainer tous ses autres benefi-
ces nient obstant, &c. Et apres q est create & consecrate
Evesque, que le roy en cest case n'auera Quare impedit vers
l'Evesque pur le prebend, ne action sur le Statute de 25.
Edw. 3. que done presentement al Roy, ou le Pape per pro-
mission done aucun benefice dont le Patronage appert al
spirituall person. Car en ambideux cases il couient e-
stre vn auoydance del benefice deuant que le Roy poe pre-
senter, ou en cest case deuant, l'Eglise ne deuant void, mes
l'incumbent continue eins de son eigne title. Et pur ceo
Hankford la dit, que l'Evesque, sur cest dispensation de re-
tainer, ne paiera fest frutes arrete pur cest benefice. Et si
le Roy ad prmer & prochein auoydance d'un benefice, &
apres graunt tel faculty ou dispensation al incumbent de
retainer cest benefice, nient obstant que il ferroit create en
Evesque, & apres l'incumbent est fait l'Evesque, vncoze ceo
ne amount al presentation, mes que apres le mort del in-
cumbent le Roy presentera vn autre Clerke a ceo: car nul
apoy-

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auoidance fuit de ce benefice, devant le mort del incumbēt: mes de aut part fuit cleerement resolute en le dit case del euesque de Saint Davids, que si le dispensation ad estre fait apres que le prebendary vst esté create euesque, q̄ le prebend ad esté void, & nul faculty püssoit lui ennable de retainer ceo enuers le roy.

Et p̄ ē en temps H.6. quant Henry Beaufort grand buncle del roy esteant euesque de Winchester fuit fait Cardinal, & apres ceo il purchase d' Pape un Bull declaratory, q̄ nient obstant q̄ il fuit fait Cardinal, que son evesquery de Winchester ne fuit void, p̄ que il püssoit è retainer come devant: bnoce fuit tenus que l' See d' Winchester fuit void p̄ lassumption del Cardinalship, q̄ exempt levesqz del jurisdiction de son Metropolitan. Et p̄ ceo le Cardinal fuit en case de Præmunire, p̄ que il purchase son pardon que est destit troue enter les Charters, 4.Hen.6. in Archiuis Turf London. 6. & 7. Elizab. Dier 233.a. Io. Packhurst esteant elect al evesquery d' Norwich, devant q̄ il fuit create euesque, obtaine dispensation d' Archevesqz de Canterbury (p̄ vertue d' statute d' faculties) de retainer yn personage, que il auoit duat, in commendam, protribus annis, viz. a festo sancti Michaelis in Anno Dom. 1560. usque ad idem festum que serroit en l' An. 1563. devant le premier feast d' Saint Michael, Packhurst est create evesqz, & puis il resigne le benefice: & le question fuit, si cest benefice vacavit p̄ resignation d' Packhurst, ou p̄ son promotion al evesquery: & fuit adiudge, q̄ l'eglise se holda per son resignation: que proue que per vertue del dit dispensation il continue person tant que il ad resigne, Vide Natur Bf 36.b. si person que ad dispensation d' tener son rectory, soit cree en euesque, & puis le patron p̄sent aut incubent que est institute, & induct, ore levesqz auera spoliation d'g cestby incumbēt, que proue, que son reall possession in le personage toutz soits continue p̄ vertue del dispensation. Illint que faculty ou dispensation a tener benefice in perpetuam commendam est bon & effectuall a tel person tantum que est plein & pfect incubent al temps del dispensation fait a lui, & nemys a cestby que nad riens en le benefice.

Ceo appiert auxy p̄ Hollands Case en le 4. part de les Reports

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Reports del Seignior Coke 75. Car la Io. May aiant le Parsonage de Northcraek, que fuit ouster l'annuel value de 8.li. accept aux benefic incompatible, issint q̄ l' p̄m̄ benefice fuit void. Ap̄s il fuit elect al evesque de Carlile, & duant son creaç, il obtain faculty de retainer le Parsonag de Northcraek in commendam, & fructus & emolumenta ad vlus suos conuertere, &c. Uncor fuit adiudge, q̄ cest faculty ne luy adera p̄ l' benefice q̄ fuit void, car il ne fuit pson al temps de dispensation graunt a luy.

Amesme l'intent est Dygbiies Case en le 4. des Reports del Seignior Coke 79. vn Merrick Parson de Norton, que fuit del annuel value de 8.li. fuit present al esglise de Stanes & admitt, & institute a ceo, p̄ ql institution l' p̄m̄ Benefice fuit void, uncor duant induction, il obtaine qualification & dispensation, Ecclesiam de Stanes recipere, & retinere quoad vix:rit, &c. Uncor ceo vient trop tard de preseruer le p̄m̄ Benefice, q̄ fuit void duant Vid. 18. El. Dyer 347. Doctour Westons case.

Sur tous ceux reasons & authoritieis ils concludont, q̄ cest faculty ou dispensation de p̄nd vn void Benefice en perpetuam commendam fuit void. Mes si benefic soit plein de incumbent, faculty poet estre graunt a cest incumbent de retainer ē in perpetuam commendam, nient obstant q̄ il p̄ist aux benefice incompatible. Et h̄c les Bulls de prouision grant p̄ le Pape, qui fueront en nature de faculties de p̄nd beneficia vacantis, vel vacatura, ne b̄nq̄s fesoient l' prouisor able de p̄nd & occupier vn Benefice que serroit void de sa teste amesme, sans institution, admission, ou induction. Car il ad enter en tiel manner, la Ley h̄t adiudge luy abatoz & disturboz, & Quare impedit q̄ssoit vers luy. Mes si tiel prouisor ad estre admitt, institute, & induc, donq̄s serroit remouue p̄ l' estatut de Provisoribus, 29. Edw. 3. 4.4.a. & 11. Henric. 4. 213.229. Mes le Roy remoueroit tiel prouisor p̄ Quare impedit ap̄s institution & induction, 19. E. 3. Fitz. Quare non admisit 7.8.

Et issint hors de tout ceo que est dit deuaunt, result cest difference entre faculty de prender benefice, & faculty de retainer benefice, viz. que faculty grant al vn que nest incumbent de prender vn void benefice, est void : & faculty al vn que

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que incumbent de un benefice, de retainer mesme le benefice, est bone. Et per consequence cest facultie grant al Evesque de Ossory esteant void, le Vicarage auantdit ne fuit viques plein de luy, per q e le Roy ad bone title a presenter a ceo per laps.

Mesme del anter part, fuit arguе per le Counsell des defendantz 1. que cest facultie grant en le forme a-
vautdit, fuit bone, & doet estre approue a allois pur
bone en cest court 2. que cest facultie fuit bien execute per
le entry del Evesque en le Vicarage sans aucun plementation
institution, & induction. 3. Que l'evesque ayant enter & oc-
cupy cest benefice p vertue de cest faculty, le esglise fuit fait
plein de luy, issint que null title puilloit de voluer al Roy
per lapsus temporis durant le vie del evesque.

Quant al primer point, ils arguont, que cest facultie
fuit bone, & doet estre allow pur bone in cest court, pur
ceo que est bien garant per un positive Ley del Realme,
viz, per le Statute de 28.H.8. cap. 20. per que les Com-
missioners ont povoer & authority a doner & graunter per
lour discretions, tielx dispensations, licences, ou faculties
p causes nient repugnant a les saint Scriptures, & leyes de
Dieu, come en temps parauant ont estre use & accusume
destre en obtaine al See de Rome: & que chescun dispen-
sation, licence, ou faculty graunt per vertue de cest act, sera
approue p bon & effectual en ley en tous courtes & jurisdic-
tions cibz Spiritual & Temporal. sc.

Et a proch, q cest faculty ou dispensation grant al evesque
de Ossory fuit bte grant p l' dit act d Parliament, fuit mme,
1. q tiel faculty ou dispensation fuit use & accusume destre
grant & obtain en le court d Rome duant l' esans d cest statut:
2. q la cause p q cest faculty ou dispensation est grant
nest repugnat ou contrary a la saint Scripture ou ley d Dieu,
3. q le faculty en cause de ceo nest unreasonable, ou meurrit
encont le ley mes est agreeable, & poet bien estoier, ou les
rules de la ley D'englettere.

1. Et p monsir que tielx faculties ou dispensations sont
use destre graunt en le Court de Rome, devant le Statute, l' original del Commenda fuit primitif enquier. Be-
suyt

fuit dit, que le Pape Leo. 4. Anno Domini. 848. aut eo cir-
citer primiceri invent le Commendam. Come appiert
libr. Decretorum causa 23. quæst. 2. ouest dit, vnde Leo 4. scri-
bit, qui plures Ecclesiæ retinet, vnam quidem titulatam alierā
vero sub commendatione tenere debet. Car ou per les aun-
tient Canons & Counsellgs, vn home ne puissait aver fors-
que vn benefice, & vncor per experience fuit trove conve-
nient que aucun foit s, viz. en case de necessarie ou utilite
del Eglise vn home aberoit le charge & les fruits de plus-
sors benefices, cest distinction fuit invent & allow, que co-
meut que home naueroit forsque vn benefice in Titalo, bn-
cor il puissait aver autre benefice in Commende, viz. que
autre benefice puissait estre commend & commit a son cu-
stdy & cure, tantque vn able incumbent fuilloit provide
pur ceo.

Mes apres, grand abuse esteant trove en le graunting
de ceur Commenda's per les Ordinaries (car omnium res-
rum, quarum est usus, potest esse abusus, virtute solum excepta,
dit. Aristotle) vn autre Canon fuit fait en le Counsell de
Lions Anno Domini 1274. pur reformation de ceo, come
appiert libr. 6. Decretal. de Elect. & Elect. potestat, cap. Nem.
Nemo deinceps parochialem Ecclesiam alicui non constituto
in legitima ætate, vel sacerdotio commendare præsumat, nec
tali, nisi vnam, & evidentí necessitate vel utilitate Ecclesiæ suadente.
Huiusmodi autem Commendæ rite factam declaramus
ultra semestre temporis spatum nō durare, &c. Mes la glosse
la dit (come est monstre devant) ista constitutio non com-
prehendit Romanum Pontificem, ideo Romanus Pontifex po-
test perpetuo commendare, illint que le Pape, nient obstant
cest Canon, ad power de doner benefices in perpetuam
Commendam.

Et reuera de puis ledit Counsell de Lions, sicome le Pa-
pe ad reserve a luy mesme le sole power a doner benefices
in perpetuam Commendam, illint il reduloit cest power in
actu, & bsoit & practisoit ceo en toys Realmes de Chi-
lendome. Specialment les Papes queux furent resident
st. Auignion en France, en le temps Henr. 2. Ed. 1. Ed. 2. E. 3.
fueront fort liberaill, non solement en graunting des Pro-
visions (encontre queux nostre statutes furent fait en
temps Ed. 1. & Ed. 3.) mes en donant tous sortes d'Eccle-
siastical

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siasticall benefices in Commendam perpetuam. Et comment que primitur ceo fuit fait pur supporter le dignity des Cardinals, come fuit professe per le Pape Clement. 6. en son Epistle al Ed. 3. que est en le history de Walsingham fol. 150.b. Uncor apres, ceus Graces furent purchase per autres Ecclesiastical persons de toutz degrees, en toutz nations de Christendome, Et specialment en Engleterre, & Ireland. Car domesticis exemplis abundamus en cest point viz. que tielz facultez ou dispensations a tenet Ecclesiastical dignitez & benefices in Commendam perpetuam furent graunt & obtaine en le Court de Rome.

En temps Henr. 3. viz Anno Domini 1253. Matth. Paris. histor. magn. 84. le grand Clerke Rob. Groshead Evesque de Lincoln, que seopposoit fortement encounter les prouisions del Pape, complainne la de cest novel prouision per boy de Commenda Ceterum, dit il, quod videre non consuevit, concedit Papa, vt aliquis Episcopatum obtineat, nec tamen Episcopus existat, sed electus sempiternus. Et per mesme testy Matth. Paris. en mesme l'history 914. est record, que Anno Domini 1257. Egidius de Bridleford Electus Sarisburiensis, manifestauit palam, quod Romæ strenue impetraverat, vt scilicet liceret ei pristinos redditus retinere, ac etiam Decanatum, quod nuper nouum habebatur, sed iam toties permisum nulli stuporem generauit.

Apres ceo, appiert per le liber 41. Edw. 3. 5. que un W. atant un Prebend en le Cathedrall Eglise de Sarum, & que le Pape, devant son consecration, ad done a lui ses benefices queux il avoit devant, & le Roy recitant cest done del Pape ad graunt a lui ses temporalitez, sur que fuit adiudice que cest Prebend ne debeat void, mes que l'Evesque retiendra ceo apres son consecration.

Il appiert aussi en le dit Case del Evesque de S. Davids 11. Henr. 4. sovent foiz cite devant, que en temps del Edw. 3. Edmund le Moigne de Bury, que fuit attendant en le Court del Edw. 3. aboit plusors benefices per tel dispensation, come est note la per Thirning. fol. 229. b. Auti Hankford dit en mesme le Case fol. 191. a. que il ad estre bievo, que un home ad estre Abbe de Glastonbury & Evesque auz deux autre Eglise simul & semel, & aboit le possession dux ples dignitez, & un mesme temps.

Aucti

Auxi le dit principall Case en 11. Henr. 4. monstre, que Henr. Chicheley (que fuit apres Archevesque de Canterbury) esteant un prebend en le Cathedrall Eglise de Sarum, fuit elect Evesque de Saint Dauids, & devant son conseillement, le Pape recevant per son Bull, quel il fuit elect Evesque de Saint Dauids, graunt a lui faculty & power de tenir & enuyer tous ses autres benefices, tantz que le Pape ad autrement ordain, &c. vid. Nou. Decision. Rotz. 3. i. mesme testy point, que fuit argu 11. Henr. 4. bien debate, nott

Et que ceux faculties ou dispensations a tenir benefices in Commendam fueront graunt en le Court del Rome en temps des Henr. 5. appiert en Linwood libr. 5. de Prabent cap. Auditio, verb. Dispensatione. En temps Henr. 6. Henry Beaufort le graund oncle del Roy, esteant fait Cardinal obtine dispensatio del Pape de retainer l'Evesquery de Winchester en Commendam, come devant est monstre, & comment que fuit tenus addiques que cest dispensation helga noint trop tard esteant graunt apres que l'Evesque fuit create Cardinal, uncor apres en temps Henr. 8. le Cardinal Wolsey ayant devant que il fuit create Cardinal, obtaine Bull del Pape de retainer l'Archevesquery de York come perpetuall administrator, & l'Abbey de Saint Albans en perpetuam commendam, il regnoit ambeideur durant son vie, per vertue de cest dispensation vid. 37. Henr. 8. i. 5. b. C. 10. 11.

Per ceulz exemples & metozites est manifest, que devant le fesang de ces statut de faculties, nulz dispensations fueront en obtaine en le Court de Rome, a tenir in Commendam Ecclesiasticall benefices en Engleterre.

Et quant a ceul Realme de Ireland, cens dispensations de Pape fneront cy frequent Iey, que en temps Edw. 4. un Special act de Parliament fuit fait encounter les Commendams graunt per le Pape al Ecclesiasticall pretors de ceul Realme, vid. l'estatut de 7. Edw. 4. cap. 1. per quod recite, That now of late diuers men of holy Church susing to the Court of Rome, haue purchased Bulls from the holy father the Pope, to haue as well Abbeyes, Priories, and oþer dignitie, as Personages, & Vicarages in Commenda, to the extinguisshement of diuine seruice, &c. per que il est ordonne, That whan soeuer man of holy Church doe purchase any manner of dignite, Personage, or Vicarage by Bulls of the Pope, to hold in

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Commendam, and the said Bulls, Personages, or Vicarages do accept; he shalbe out of the Kings protectiō, &c. And that no pardon or licence of the Kiug made, or to be made, bee avayleable in this behalfe, but be vtterly voyd, if it bee not by act of Parliament. Et cest speciall act encounterer les Commendams del Pape fuit fait en cest Realme pur ceo que les Statutes faites encounter Provisozs en temps Edw. 3. parlent tant solement de Relevations, Collations, & Prouisions del Pape queux parols n'extendent al Commendams come Hankford tient 11. Henr. 4. 2. 1. 3. a.

2. La cause pur que cest faculty ou dispensation fuit graunt nest repugnant ou contrary al Saint Escripture ou ley de Dieu. Car plurality de benefices nest prohibit per le Scripture ou ley de Dieu, mesme est contra eis un expresse Text que dit, 1. Timoth. c. 5. Qui benē præfunt presbyteri dupliciti honoris digni habeantur; dicit eam Scriptura non alligabis os boui tritiranti, &c. Et est alter Text que require, vt Episcopus sit Hospitalis. Et le principal cause de graunting cest faculty fuit pur enabler le Evesque a maintenir hospitality, comme tous appropiations & unions fuerunt fait pur mesme le cause. Ainsi l'Office quel l'Evesque aden l'Esglise est de grand dignity, quel dignity ne poe estre preserue sans countenance & maintenance. Pur que quant les rebe-newes del Evesquery ne sont sufficient, l'Ecclesiastical policy que done competent addition per boy de Commendam, ne sera dire repugnant ou contrary al ley de Dicu.

Ainsi il poe bien estoier obe reason a religion, que un Evesque avera & retainera un particulaer benefice obe cure deins son Diocese demesme, pur ceo que il ad le generall cure de tous Esglises la: habet curam Curarum, pur que sur chescun institution il dit, accipe curam tuam & dicam. Et sur cest reason en auncient temps plusors Rectories que cure ont estre appropriate al Euelqueries: come les Rectories de Eastmeane & Hambleden sont appropriate ad mensam Episcopi Winton, & l'Evesque de Sarum ad plusors Rectories appropriate a son See: en mesme le maner auoent le Primate de Armagh, & l'Archivesque de Dublin en cest Realme certaine Rectories appropriate ad mensam en lour severall Dioceses. Et reuera devant le diuision de parishes, chescun Evesque auoit

voit le distribution de tous leg disnes deins son Dioce-
le, come Beda dit en son Ecclesiastical history, lib. 1. ca. 28.

3 Cest faculty ou dispensation (comment que dispensationes non debent trahi ad communem legem, come les Canonists diont) nest repugnant al rules del Common ley D'engle-
terre. Car la common ley D'engleterre ne prohibit plu-
ralities, ne fait l'infierz benefice void, si incumbent soit
create en Evesque, mes l'ancient l'Ecclesiastical ley D'en-
gleterre, oule que l'Roy puisloit toutsoits dispenser per
l'rule del Common ley, come auant est monstre, 11. Henr. 4.
213.a.b. Plow. Coment. Grendos Case, 503. b. 11. H. 4. 12. 2.

Et nota que l' dit Statute 7. Edw. 4. cap. 2. enact en
cest Realme, que ordaine que cestuy que purchale Bull del
Pape de tener benefice en Commendé sera hors del Pro-
tection del Roy, prouide auxi que pardon ou licence del
Roy ne sera auailable en cest Case, que imply, que l'
Judgment del Parliament adonques fuit, que licence del
Roy serroit auailable per l'rule del Common ley en tel
case, accordant al opinion d'Hankford. 11. Henr. 4. cite de-
uant. Et estoit oue bon reason que l' Roy dispenser aue
l'Ecclesiastical ley touchant benefices, pur ceo que l' Roy
& ses lay subiects fueront les donoys de tous benefices
al Ecclesiastical persons & pur ceo Marsil. Patavinus appelle
les benefices del Esglise Eleemosinas laicorum.

Mes la verity est, que tielx faculties ou dispensations
graunt per l' Pape touchant Ecclesiastical benefices en
Engleterre, fueront toutsoits encounter la ley del Realme,
car fuit meere usurpation sur la Corone D'engleterre de-
vant les statutes faites encounter Prouisors. Et ceux
statutes furent fait en declaration del common ley, en
cest point, 12. Edw. 2. Fitz. Quar. Imp. 169. 19. Ed. 2. Fitz. Quar.
non admisit 7. 15. Edw. 3. Fitz. Quar. Imp. 160. 21. Edw. 3. 49.
11. Henr. 4. 230. a.

Et quant al iniury que est suppose destre fait al Pat-
tron per le graunting & executing de cest faculty, en cest
Case, est manifest, come cest Case est, que l' Patron nest
prejudice. Car l'Evesque ne enter en l' Vicarage, tant-
que ceo ad estre void per tempus semestrie, & sicut title ac-
cruo al Evesque mesme a collateral per laps. Et sur
cest reason Rebuffus libr. de praxi beneficiorum miss vu rule

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quod quando laici patroni non præsentauerint infra tempus à iure præfixum, ita quod collatio deuoluta sit ad superiorēm per lapsū temporis, Papa de iure prouidere potest, sine derogatione iuris patronatus laicorum.

Secondment fuit argue per le counsell des defendants, que cest faculty fuit bien execute per acceptance & entre del Evesque en le dit vicarage sans presentation, institution, ou induction, car ceux actes ouceremonies ne sont toutfoits de necessitie de lestre use en conferring dun personage ou Vicarage, que poet estre bien fait divers voies sans presentation, institution, & induction, 1. per boy dappropriation. 2. per boy de vñion. 3. per boy de permutation. 4. per boy de Commendam, & en temps pacabant, quant le Pape usurpoit surdictio en Engleterre, fuit vñ s. boy viz. per boy de Prouision. 1. Quant al appropriation, vid. Plow. Comment. Grendons Case 500.a. 503. a. ou appert que le Rop que ad sufficient autority a faire ceo come Plow. la dit ad en son patent dappropriation la Dispense ouz admission, institution, & inductio, & addone power al Deane & Chappeler de Wigorn a que lappropriation fuit fait denter en le personage, & de retainer ces sans autre ceremonie, & cestut resolute & adiudge bon dispensation en test case. Vid. r forme del patent dappropriation en le dit case de Grendons Plow. Comment. 494.2 & compare ceo que le facul. y supata. Car est grand resemblance, come semble, entre Commendam perpetuum, & appropriation. Le difference est en le temps de continuance, car Commenda perpetua est durant le vie del commendatory tantum, & appropriation est en perpetuity.

2 Quant al vñion, vid. 1.1. Henr. 7.8. ou Chappell esteant plein dun incumbent fuit boite al Magdalen Colledge en Oxford, & apres lincumbet resigne, le President & Schollers entrent en le Cahppel, sans autre donation ou induction: & ceo agree ouz Rebuffus in regula de vñiosibus oll il dit, possessio apprehendi potest propria authoritate in vñione vid. art. 50 Edw. 3. 27.40. Edw. 3. 48.

3 Quant al permutation, vid. 2. Henr. 4. 1.1. a. ou est dit, que une permutation entry est liall sans plus, vid. art. 1. Ed 3.8.7. vid. Rebuffus in praxi beneficiorum titulo de collationibus, 653. quot sunt requisita in permutatione beneficiorum.

Et fuit

Et fuit dit, que tel faculty de prendre beneficium vacatum apres le mort del encumbent, fuit semble al graunt del vn reversion de terre apres le mort del tenant pur vie, en quel case coment que tenant pur vie besoigne d'a-uer liuery de Heilun, bncor le grauntee del reversion apres le mort del tenant pur vie poer enter proprii auctoritate sans tel ceremony de liuery.

Fuit auxi dit, que la ley dispensera une formall institu-
tion, collation, & induction, en cest case, pur ceo que l'Evesque
mesme est destre inuest en le benefice, & pur ceo ou accep-
tance & entry est suffisant: Come la common ley dispense
sue expresse Atturament, ou reversion est graunt al cesty
que doct atturmet, & que actuaill deliuery del legacy ou le-
gatary est fait executoz (que poet auxi paper lui mesme
per voy de retainer) & que assignement de Dower oufeme
est garden en Socage, & voet endowter lui mesme de la
plus beale.

Et s'come en atnient temps prouision del Pape aman-
toit al collation, & sur ceo le prouisor puissot enter, come
est tenuis per Plow. en Grendons Case, 500 & 11. Hen. 4. 220
Hankford dit, que prouision est come institution & acceptance
come induction: illint cest faculty de prendre le benefice, que
acceptance & entry del Evesque, amount al collation & in-
duction.

DAccrayment fuit arguie per le counsell des defonvances
que quant l'Evesque ad enter & occupie cest benefice
per vertue de cest faculty, que immediatement l'Esglise fuit
fait plein de lui, & illint nul Title de presentation fuit de-
nouie al Roy per lapsus temporis, durant la vie del Evesque.

Et a prouier cest barrain pointe, furent dient que cest y que
ad vn benefice per Canonicali title, est plein & perfect en-
cumbent, & l'Esglise est plein de lui. Mes cest y que ad
benefice virtute commendae perpetuae ad ceo per Canonicali
title, & pur ceo tel commendatary est plein & perfect en-
cumbent, & l'Esglise est plein de lui. A prouier cest argu-
ment Linwood fuit cite de Filii Presbyt. cap. com. iure. Verb.
vlio titulo. pur si de sine Canonicali title en cestmantier. Titu-
lus Canonicus est ius spirituale, sive causa habendi beneficium
Ecclesia-

Le case de Commenda.

Ecclesiasticum, qui potest esse per viam Institutionis, Collationis, Electionis, Cōmendæ, vel alterius prouisionis. Et in Cōstitut. Orthoboni annex al Linwood. cap. Miserabil, verb. Cōmendare, fol. 65. est dit, quod habens communēdam habet titulū Canonicum approbatum a iure propter necessitatē vel utilitatē Ecclesiæ, & ideo concessa Commenda Ecclesia nō vacat.

Et pur ceo, s'come admission, & institution tantum est bon Title, & fait plenarty enter common persons, & institution & induction ou installation est bon Title vers le Roy, 22. Henr. 6. 27. 44. Ed. 3. 3. & sans tiel Title home nauera brieve al Euelque en Quare impedit. 33. Henr. 6. 1. 12. Hen. 4. 11. 22. H. 6. 44. 45. 19. Edw. 4. 9. Il sunt Cōmenda que amount al admission & institution, & l'entry del Commandatary virtute Commenda est bon Title, & fait plenarty en cest Case. Et cest ius spirituale, sive causa habendi beneficium Ecclesiasticum est appell Title, pur ceo que qui titulum habet ad beneficium come Rebuffus dit, potest nominari & subscribi sub titulo illius beneficij, adeo ut beneficium suum dici possit. Et habet in eo plenum ius, & fructus suos facit, ut maritus habet ius in uxore & omnibus bonis eius.

Mes ou est dit, que home ad Canonical Title per vertus del Cōmenda, ceo est destrē entend del Cōmenda perpetua, & nem̄ del Cōmenda temporalis. Car Cōmenda temporalis est forsque sequestration, & poēt estre grant per quescun ordinary pur tempus semestre, come est monstre devant. Et pur ceo tiel Commandatary non est Prælatus, nec Maritus Ecclesiæ, nec facit fructus suos, sed est administrator tantum, & custos Ecclesiæ. Et tiel Cōmenda non est titulus, nec facit titulum, sed est quoddam depositum, tūsque a ceo que sufficient encumbent soit prouide pur l'Eglise, & pur ceo tiel Cōmenda est communement grant, quant le patron ne p̄esent un able person, ou quant l'Eglise est litigious.

Mes Cōmenda perpetua que continet durant l' die, del Commandatary, ne poēt estre grant per alcun intermix ordinary mes solement per l' Pape en tiel pais ou il ad jurisdiction, ou per l' Roy ou ses Delegates en cest Realme, a cest Cōmenda est titulus Canonicus, nam nullat eadem ratione perpetuis Commandis quæ in alijs virulis, libr. & de Electionibus cap. Nemo, & issint ad estre souene
autobus
foitg

dit sicut iudice in Rota, come Gomes dicit, in regul' de Triennali pōt est libere ou il autre cest point pro & contra alio iuge, ou il dit, que le faculty del perpetua Commenda est amplissimā diffi-
cillimā, & habet libertatem verborum, viz. licentia & facultas
fructus omnes percipiendi & in proprios usus conseruandi,
&c. Quæ verba important collationem & titulum, & non
simplex depositum. **Et ouster il dit**, ille dicitur verus & le-
gitimus titulus qui à lege, vel homine potestatem habente est
concessus, & signa veri & legitimū tituli sunt, perpetuitas, & fru-
ctuum dispositio, quæ duo concurrunt in Commenda perpe-
tua. **I: dit auxilia**, quod permutatio potest esse de Commen-
da perpetua ad commendam perpetuam, & **de tiel** Commenda
ad titulum, & quod talis Commendatarius potest locare om-
nia bona Ecclesie: quod Comienda est instar Collationis, &
sicut reseratio Papæ vacat per Collationem sic per Comen-
dam perpetuam, secus per temporalem: quodque per Conumē-
dam perpetuam beneficium definit vacare, & fit plenum, quasi
per viam Collationis.

Rebuffus auxili in libr. de praxi beneficiorum. 135. agree one
Gomes, ou il dit, per mortem Commendatarij perpetui bene-
ficium vacat, non vt prius, sed per mortem, & hæc est praxis
in Francia. Comienda perpetua permutari potest cum titulo,
quod saepius vidi. Commendatarius perpetuus fructus recipit,
confert, locat, ac alia omnia facit, sicut habens titulum. Comen-
da perpetua non potest reuocari.

Fuit ouster note a obserue, que en le Canon ley il y ad
2. sortes de Vicarages, Vicaria temporalis, & Vicaria perpe-
tua. Vicaria temporalis fuit compare al Commenda tempora-
lis, pur ceo que tiel temporal vicar non habet titulum, sed
seruit alieno nomine, & propriè curam non habet. Secus est de
Vicaria perpetua, quæ est incompatibilis cum alio beneficio
& haber curam animarum, & talis Vicarius habet titulum Ca-
nonicem, & Quat. impedit gist de tiel perpetuall vicariate.
Fitz. N. Br. 32. h. Registr. 31. a. Et tiel vicar auera iuris utrum
de terres annex on done a lui perpetualment, per le Stat.
de 14. Edw. 3. cap. 17. vid. 40. Edw. 3. 28. b. ou Finchden dit,
que comment que ad estre tenuis que vicar naueta action de
ses possessions vers null person, bcoz la ley est change
en cest point, & per reason, quant il est endow a lui & ses
successors perpetuallment.

Et cœ

Le case de Commenda

Et ceo fuit le substance des arguments ex yra que parte
tait en ces Case. Car nul Judgement est fait done en
ceo, l'Attorney general & Bolton Recordes de Dublin and
Oliver Eustace le Ciuillian furent a Counsell le que Clarke
del Roy & William Talbot, James Briuer, & John Haly Doc-
tor del Ciuilley obe les defendantz.

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Hill.4.Iacobi.

The Case of Præmunire,

OR

The Conuiction and Attainder of *Robert Lalor*
Priest, beeing endited vpon the statute
of 16.Rich.2.cap.5.

THis *Robert Lalor* beeing a Native of this Kingdome receiued his Orders of Priest-hood aboue thirty yeares since at the hands of one *Richard Brady*, to whom the Pope had giuen the title of Bishop of *Kilmore* in *Leinster*, and for the space of twenty yeares together his authority and credit was not meane within the Prouince of *Leinster*. Hee had also made his name knowne in the Court of *Rome*, and held intelligence with the Cardinall who was Protector of this Nation, by meanes whereof he obtained the title and iurisdiction of *Vicar general* of the Sea Apostolike within the Archbishoprick of *Dublin*, and the Bishopricks of *Kildare*, and *Fernes*. This pretended iurisdiction extendidg welny ouer all the Prouince of *Leinster*, he exercised boldly and securely many yeares together, vntill the Proclamation was published, whereby all *Jesuits* and *Priests* ordained by forraigne authority, were commanded to depart out of this kingdome, by a certaine time prefixed. After which time he began to lurke and to change his name, howbeit at last he was apprehended in *Dublin*, and committed to prison in the Castle there. Vpon his first examination

*Of what
quality, and
credit Rober
Lalor was.*

on

The case of Praemunire.

His apprehension and first examination.
On taken by the Lord Deputie himselfe, he acknowledged that he was a Priest, and ordained by a Popish *Titulari* Bishop, that he had accepted the title and Office of the Popes *Vicar generall* in the third Dioceses before named, and had exercised spirituall iurisdiction *in foro conscientia*, and in sundry other points he maintained and iustified the Popes authority, onely he said, he was of opinion, that the Pope had no power to excommunicate or depose his Maestie, because the King is not of the Popes Religion.

His first indictment and conviction.
The next terme after, he was indicted vpon the statute of 2. Eliz. enacted in this Realme, against such as shoulde wilfully and aduisedly maintaine and vphold the iurisdiction of any forreine Prince or Prelat in any causes Ecclesiasticall or Ciuite within this Realme. By which statute the first offence of that kind is punished with losse of goods, and one yeares imprisonment, the second offence incurreth the penaltie of the *Praemunire*; and the third offence is made high Treason. Vpon this Indictment he was arraigned, convicted, and condemned, and so rested in prison during the next two Tearnies without any further question. He then made petition vnto the Lord Deputie to be set at liberty, whereupon his Lordship caused him to be examined by Sir Oliver Saint John, Sir James Fullerton, Sir Jefferie Fenton, the Attorney and Solicitor general. At first hee made some euasive and indirect answers, but at last voluntarily and freely he made this ensuing acknowledgement or confession, which being set downe in writing word for word, as hee made it, was aduisedly read by him, and subscribed with his owne hand, and with the hands of those who tooke his examination, and afterwards he confirmed it by his oath before the Lord Deputie and Counsell.

His second examination.

The confession or acknowledgement of Robert Lalor Priest, made the

22. of December. 1606.

His confession or acknowledgement.

First he doth acknowledge that he is not a lawfull *Vicar generall* in the Dioceses of Dublin, Kildare and Fernes, and thinketh in his conscience that he cannot lawfully take vp. on him the said Office.

Item

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Item hee doth acknowledge our Soveraigne Lord King James that now is, to be his lawfull, chiefe, and Supreme governour in all causes, as well Ecclesiastical as Ciuitall, and that he is bound in conscience to obey him in all the said causes, and that neither the Pope, nor any other forreine Prelate, Prince, or Potentate hath any power to controll the King in any cause Ecclesiastical or Ciuitall within this Kingdome, or any of his Maiesties Dominions. Scrib. in mea lib. 2 fol. 217. T. 8.

Item he doth in his conscience beleue, that all Bishoppes ordained and made by the Kings authority within any of his Dominions, are lawfull Bishoppes, and that no Bishop made by the Pope, or by anie authorite derived from the Pope within the Kings Dominions, hath any power or authoritie to impugne disanull, or controll any Act, done by any Bishop madd by his Maiesties authoritie as aforesaid. Scrib. in mea lib. 2 fol. 217. T. 8.

Item he professeth himselfe willing and ready to obey the King as a good and obedient Subject ought to doe, in all his lawfull commandements, eyther concerning his function of Priesthood, or any other dutie belonging to a good Subject. Scrib. in mea lib. 2 fol. 217. T. 8.

After this confession made, the State here had no purpose to proceed against him severely, either for his contemp of the Proclamation, or offence against the Law. So as he had more liberty than before, and many of his friends had access vnto him, who telling him what they heard of his confession, hee protested vnto them, that he had only acknowledged the Kings Ciuitall and Temporall power, without any confession or admittance of his authoritie in spirituall causes. This being reported vnto the Lord Deputie by sundry gentlemen, who gaue faith vnto what he said, his Lordship thought fit, that since he had incurred the paine of Praemunire by exercising Episcopall iurisdiction as Vicar generall to the Pope, that hee should be attainted of that offence, as well to make him an example to others of his profession (for almost in euery Diocess of this kingdome there is a Titulary Bishop ordained by the Pope) as also that at the time of his trial a iust occasion might be taken, to publish the confession and acknowledgement which he had voluntarielly made, signed, and confirmed by oath before the Lord Deputie and Counsell, who haue likewise subscribed their names as witnesses thereof. Scrib. in mea lib. 2 fol. 217. T. 8.

P

Herc-

The case of Praemunire.

Hereupon, in Hilarie Term 4. Iacobi, an inditement was framed against him, in the Kings Bench vpon the Statute of 16. Rich. 2 cap. 5. containing these severall points.

The inditement of Lelor upon the stat. of 16. Ric. 2.

1. That he had received a *Bull or Breve* purchased or procured in the Court of Rome, which *Bull or Breve* did touch or concerne the Kings Crowne and dignity Royall, containing a Commission of Authoritie from the Pope of Rome vnto Richard Brady and David Magragh to constitute a *Viceray generall* for the Sea of Rome, by the name of the *Sea Apostolike*, in the severall Dioceses of Dublin, Kildare, and Fernes within this Kingdome of Ireland.

2. That by pretext or colour of that *Bull or Breve* hee was constituted *Viceray generall* of the Sea of Rome, & took vpon him the stile and title of *Viceray generall* in the said severall dioceses.

3. That he did exercise Ecclesiasticall Iurisdiction as *Viceray generall* of the Sea of Rome, by instituting divers persons to benefices with cure of soules by granting dispensations in causes Matrimoniall, by pronouncing sentences of divorce between divers married persons, and by doing all other acts and things pertaining to Episcopall iurisdiction within the said severall Dioceses, against our Soueraigne Lord the King his Crowne and dignitie Royall, and in contempt of his Maiestie, and disheritisyon of his Crowne, and contrary to the forme and effect of the statute, &c.

To this inditement *Lelor* pleaded *not guilty*, and when the issue was to be tried, the name and reputation of the man, and the nature of the cause, drew all the principall gentlemen both of the *Pale* and *Provinces* that were in towne to the hearing of the matter. At what time a substantiall Lutie of the City of Dublin being sworne for the trial, and the points of the Inditement being opened and set forth by the *Kings Seruant*, the *Attorney generall* thought it not impertinent, but very necessary, before he descended to the particular evidence against the prisoner, to informe and satisfie the hearers in two points.

1. What reason moued vs to ground this inditement vpon the old Statute of 16. Ricb. 2. rather than vpon some other later law made since the time of King Henr. 8.

2. What were the true causes of the making of this law of 16. Ricb. and other former lawes against *Promisors* and such as did appealle to the Court of Rome in those times, when both

the

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the Prince & people of England did for the most part acknowledge the Pope to be the *thirteenth Apostle*, and onely oracle in matters of Religion, and did follow his doctrine in most of those points, wherein we now dissent from him.

1. For the first point, we did purposely forbear to proceede against him vpon any latter law, to the end, that such as were ignorant, might be informed, that long before K. Henr. 8. was borne, diuers lawes were made against the usurpation of the Bishop of Rome vpon the rights of the Crowne of England, well neare as sharpe and as feuere as any statutes which haue bin made in later times, and that therefore we made choice to proceede vpon a law made more then 200. yeares past, when the King, the Lords, and Commons which made the lawes, and the Judges which did interpret the lawes, did for the most part follow the same opinions in Religion, which were taught and held in the Court of Rome.

2. For the second point, the causes that moued and almost *The true cause of me* enforced the English nation to make this, and other statutes of *king the stat.* the same nature, were of the greatest importance that could *of 16.R.2. &* possibly arise in any state. For these lawes were made to uphold *other statutes* and maintaine the Soueraigntie of the King, the liberty of the people, the common lawe, and the common-weale, which *against* otherwise had beene vndermined and vtterly ruined by the usurpation of the *Bishop of Rome*. *Prouisors.*

For albeit the Kings of England were absolute Emperours within their Dominions, and had vnder them as learned a Prelacie and Cleargie, as valiant and prudent a Nobility, as free and wealthy a Commonaltie as any was then in Christendom; yet if wee looke into the stories and records of these two Imperiall kingdomes, we shall find, That if these lawes of *Prerogative* and *Praemunire* had not beene made, they had lost the name of Imperiall, and of Kingdomes too, & had bin long since made Tributary Prouinces to the *Bishop of Rome*, or rather part of S. Petes patrimony in demesine. Our King had had their Scepters wrested out of their hands, their Crowns spurned off frō their heads, their necks trod vpon, they had bin made Laquaies or footmen to the Bishop of Rome, as some of the Emperors and French Kings were, our Prelates had beene made his Chaplaines and Clearks, our Nobilitie his vassalls and seruants, our Commons his slaves and villaines, if these Acts of manu-mis-
tion

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sion had not freed them. In a word, before the making of these Lawes, the flourishing Crowne and Common-wealth of Englad was in extream danger to haue bin brought intomost miserable seritude and slauery, vnder colour of Religion and deuotion to the Sea of Rome. And this was not onely seen and felt by the King, and much repined at, and protested against by the Nobilitie, but the Commons, the generall multitude of the Subiects did exclame and cry out vpon it. For the Commons of England may be an example vnto all other Subiects in the world in this, that they haue euer beeene tender and sensible of the wrongs and dishonors offered vnto their Kings, and haue euer contended to vphold and maintaine their honour and Soueraigntie. And their faith and loyaltie hath been generally such (though euery age hath brought forth some particular monsters of disloyaltie) as no pretence of zeale or religion could euer withdraw the greater part of the Subiects to submit themselues to a forrein yoke, no not when Popery was in her height and exaltation, wherof this Act and diuers other of the same kind are cleere and manifest testimonies. For this *Act of 16. Rich. 2.* was made at the prayer of the Commons: which prayer they make not for themselues, neither shew they their owne selfe-loue therein (as in other Bills which contain their grievances) but their loue and zeale to the King and his Crowne. When after the Norman Conquest they importuned their Kings for the *great Charter*, they sought their owne liberties, and in other bills preferred commonly by the Commons against *Shrieves, Escheators, Purveyors*, or the like, they seek their owne profit and ease: but here their petition is to the King, to make a law for the defence and maintenance of his owne honor. They complaine, that by Bulls and processes from Rome the King is depriued of that iurisdictiō which belongs of right to his imperiall Crowne: that the King doth loose the seruice and counsell of his Prelats, and learned men by translations made by the Bishop of Rome: That the Kings lawes are defeated at his will, the Treasure of the Realme is exhausted and exported to enrich his Court, & that by those means the Crown of England, which hath euer beeene free and subiect vnto none, but immedately vnto God, should bee submitted vnto the Bishop of Rome, to the vtter destruction of the King and the whole Realme, which God defend, say they: and there

*The statute
of præmunire
made at
prayer of the
Commons.*

*The effect of
the statute of
16. R. 2. c. 5*

upon

ypon out of their exceeding zeale and seruencie, they offer to live and die wiþ the king in defence of the liberties of the Crowne. And lastly they pray and require the King by way of iustice, to examine all the Lords in Parliament, what they thought of these manifest wrongs and usurpations, and whether they would stand with the King in defence of his Royall liberties, or no: which the King did according to their petition: and the Lords Spirituall and Temporal did all answere, that these usurpations of the Bishop of Rome were against the liberties of the Crowne, and that they were all bound by their allegiance to stand with the King and to maintaine his honour and prerogatiue. And therupon it was enacted with a full consent of the three Estates, that such as should purchase in the Court of Rome, or elsewhere, anie *Bulls* or *Processes*, or other things which might touch the King in his Crowne and dignitie Royall, and such as should bring them into the Realme, and such as should receiue them, publish them, or execute them, they their Notaries, Proctors, Maintainerors, and Counsellours, should bee all out of the Kings protection, their lands and goods forfeited to the King, their bodies attached if they might be found, or else processe of *Præmunire facias* to be awarded against them. Vpon these motiues, and with this affection and zeale of the people, was the statute of 16. Rich. 2. made, whereupon we haue framed our indictment.

Now let vs looke higher, and see whether the former lawes made by King Edw. 3. and King Edw. 1. against the usurpation of the Bishop of Rome were not grounded vpon the like cause and reason. The statute of 38. Edw. 3 cap. 1. expressing the ini-

*The effect
of the statute
of 38. Edw.
3. cap. 1.*

chieves that did arise by *Brenes of citation*, which drew the bodies of the people, and by *Bulls of prouision* and *reservatioun* of Ecclesiasticall benefices, which drew the wealth of the Realm

to the Court of Rome, doth declare, that by these meanes the ancient lawes, customes, and franchises of the Realm were confounded, the Crowne of our Soueraigne Lord the King diminished, and his person falsely defamed, the Treasure and riches of the land carried away, the Subiects of the Realm malested and impoerisched, the benefices of holy Church wasted and destroied, Divine seruice, Hospitalitic, Almesdeeds, and other works of charitiue neglected.

as shamed bloudy blissole

The case of Præmunire.

*The Statute
of 27. Edw.
cap. 1.*

*The Statute
of 25. Edw.
3. reciting
the Statute of
25. Ed. 1.*

Againe 27. Edw. 3. cap. 1. vpon the grieuous and clamorous complaint (for that phrase is there vsed) of the great men, and Commons touching *Citations* and *Promissions*, it is enacted, that the offendours shall forfeit their lands, goods, and chattells, and their bodies be imprisoned and ransomed at the Kings will. But in the Statute of 25. Edw. 3. wherein the first lawe against *Promisors* made 25. Edw. 1. is recited, there is a larger declaration of these inconueniences, than in the two last Acts before mentioned. Forthere all the Commons of the Realme doe grieuously complaine, that where theas holy Church of Eng, land was first founded in estate of Prelacie by the Kings and Nobilitie of that Realme, and by them endowed with great possessions and reuenewes in lands, rents, and Aduowsons, to the end the people might be informed in Religion, Hospitality might be kept, and other works of Charite might be exercised within the Realme. And whereas the King and other founders of the said Prelacies were the rightfull Patrons and Adowe:s therof, and vpon auoydance of such Ecclesiasticall promotions had power to aduance thereunto their kinsmen, friends, and other learned men of the birth of that Realme, which being so advanced became able and worthy persons to serue the King in Counsell, and other places in the Commonweale; The Bishop of Rome usurping the Seigniory of such possessions and benefices did giue & grant the same, to *Aliens*, which did neuer dwell in England, and to *Cardinals* which might not dwell there, as if he were rightfull Patron of those benefices: whereas by the law of England he never had right to the Patronage thereof: whereby in short time all the spirituall promotions in the Realme would be ingrossed into the hands of Strangers, Canonical Elections of Prelats would be abolished, workes of Charity would cease, the founders and true patrons of Churches would be disinherited, the Kings Counsell would be weakened, the whole kingdome impouerished, and the lawes and rights of the Realme destroyed. Vpon this complaint it was resolued in Parliament, That these oppressions and grievances should not bee suffered in any manner: and therefore it was enacted, that the King and his Subjects should thenceforth enjoy the rights of patronage, that free elections of Archbishops, Bishops, and other Prelates electiue should be made according to the ancient grants of the Kings

The case of Præmunire.

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Kings progenitors and ther founders, that no *Bulls* of *Prouis-
ors* should be put in execusion, but that the *Prouisors* should bee
attached, fined, and ransomed at the Kings will, and withall
imprisoned till they had renounced the benefits of their *Bulls*,
satisfied the partie grieved, and giuen sureties not to commit
the like offence againe.

Now, Master *Lalor*, what thinke you of these things? did
you beleue that such lawes as these had beeene made against
the Pope 200. 250. 300. yeares since? was King *Hen. 8.* the
first Prince that opposed the Popes vsurped authority, & were
our Protestants the first Subiects that euer complained of the
Court of Rome? of what Religion thinke you, were the pro-
pounders and enacters of these lawes? were they good Catho-
likes? or good Subiects? or what were they? You will not
say they were Protestants, for you will not admit the refor-
med Religion to be so ancient as those times, neither can you
say they were vndutifull, for they strove to vphold their
liege Lords Soueraignety. Doubtlesse the people in those
dayes did generally embrace the vulgar errours and superstitions
of the Romish Church, and in that respect were Papists as
well as you, but they had not learned the new doctrine of
the Popes Supremacie, and transcendent authority ouer Kings;
They did not beleue he had power to depose Princes, and
discharge Subiects of their allegiance, to abrogate the fundametall
lawes of kingdomes, and to impose his Canons as binding
lawes vpon all nations, without their consents: they
thought it a good point of Religion to be good Subiects, to
honour their King, to loue their country, and to maintaine the
lawes and liberties thereof, howsoeuer in other points they
did erre and were mislead with the Church of Rome.

So as now (Master *Lalor*) you haue no excuse, no euasion,
but your conscience must condemne you, as well as the lawe;
since the law-makers in all ages, and all religious Papists and
Protestants doe condemne you, vniuersall you thinke your selfe
wiser than all the Bishops that were the in England, or all the
Judges who in those dayes were learned in the Ciuill and Ca-
non lawes, as well as in the Common lawes of England. But
you being an *Irish man*, will say, perhaps these lawes were made
in *England*, and that the *Irish* Nation gaue no particular con-
sent thereunto, onely there was an implicite consent wrapt
and

*These lawes
made by such
as did pre-
fess the Ro-
mish Religion*

*Lawes against
Prouisors
made in
Ireland
and*

The case of Praemunire.

and folded vp in generall tearmes giuen in the statute of 10.
Henr. 7. cap. 22. whereby all statutes made in England, are es-
tablished and made of force in Ireland. Assuredly, though the
first Parliament held in *Ireland*, was after the first law against
Prouisors made in England yet haue there bin as many particu-
lar lawes made in Ireland against *Prouisors*, *Citations*, *Bulls*, and
Breeues of the Court of Rome, as are to be found in all the Par-
liament Rolls in England. What will you say if in the selfe-
same Parliament of 10. *Henr. 7. cap. 5.* a special law were made,
enacting, authorising, and confirming in this Realme all the
statutes of England made against *Prouisors*? if before this the
like law were made. 32. *Henr. 6. cap. 4.* and againe. 28. *Henr. 6.*
cap. 30. the like. And before that, the like law were made. 40.
Edw. 3. cap. 13. in the famous Parliament of *Kilkenny*. If a sta-
tute of the same nature were made. 7. *Edw. 4. cap. 2.* and a seve-
rer law then all these. 16. *Edw. 4. cap. 4.* That such as purchase
any *Bulls* or *Prouision* in the Court of Rome, as soone as they
haue published or executed the same to the hurt of any incum-
bent, should be adiudged traytors: which Act if it be not re-
pealed by the Statute of *Queene Mary*, may terrifie Ma-
ster *Lalor* more than all the Actes which are before remem-
bered.

But let vs ascend yet higher, to see when the Popes usur-
pation, which caused all these complaints, began in England,
with what successe it was continued; and by what degrees it
rose to that heighth, that it well neuer topp't the Crowne;
whereby it will appear whether he had gained a circel by
prescription by a long and quiet possession, before the making
of these lawes.

The first encroachment of the Bishop of Rome vpon the li-
berties of the Crowne of England, was made in the time of
King *William the Conqueror*. For before that time the Popes
writ did not runne in England, his *Buls* of excommunication and
prouision came not thither, no *citation*, no *appeales* were made

from thence to the Court of Rome. Our Archbishops did not
purchase their *Palls* there, neither had the Pope the *investiture*
of any of our Bishopricks. For it is to be observed, that as un-
der the Temporall Monarchie of Rome, *Brittany* was one of the
last Provinces that was won, & one of the first that was lost a-
gain. So vnder the spirituall Monarchie of the Pope of Rome, Eng-
land

When the
Pope began
first to usurp
upon the
liberties of
the Crowne
of England.

A compariso-
ne of the spiritu-
al Monarchy
of the Church
with the tem-
porall Mo-
narchie of
the world.

land was one of the last countreys of Christendom that received his yoke, & was againe one of the first that did reiect and cast it off. And truely, as in this, so in diuers other points, the course of this *spirituall Monarchy* of the *Pope*, may bee aptly compared with the course of the *temporall Monarchies* of the world: For as the *temporall Monarchies* were first raised by intrusion vpon other Princes and Common-weales; so did this *spiritual Prince* (as they now stile him) grow to his greatnesse by usurping vpon other States and Churches. As the *temporall Monarchies*, following the course of the *Sunne*, did rise in the *East*, and settle in the *West*, so did the *Hierarchie* or gouernment of the Church. Of the foure *temporall Monarchies* the first two were in *Asia*: the latter two in *Europe*: but the *Romane Monarchy* did surpassee and supprese them all: So were there foure great *Patriarches*, or *Ecclesiasticall Hierarchies*, two in the *East*, and two in the *VVest*, but the *Romane Patriarch* exalted himselfe, and usurped a *Supremacie* aboue them all. And as the rising of the *Romane Empire* was most opposed by the State of *Carthage* in *Africa* (*amule Rome Carthago*:) So the Councell of *Carthage* and the *African Bishops* did first forbid *appeals* to Rome, and opposed the *Supremacie* of the *Pope*. And doth not *Daniels image*, whose head was of gold, and legs and feete of iron and clay, represent this *spirituall Monarchy* as well as the *temporall*, whereas the first Bishops of Rome were *golden Priests*, though they had but wooden Chalices, and that the *Popes* of later times haue beeene for the most part wordly and earthly minded? And as the *Notherne Nations* first revolted from the *Romane Monarchie*, and at last brake it in peces, haue not the *North* and *Northwest Nations*, first fallen away from the *Papacie*, and are they not like in the end to bring it to ruine?

But to returme to our purpose. The Bishop of Rome before the first *Norman Conquest* had no iurisdiction in the Realme of England, neither in the time of the *Brittons*, nor in the time of the *Saxons*. Eleutherius the Pope within lesse then 200 yeares after Christ, writes to Lucius the Britissh King, and calls him *Gods Vicar* wthin his kingdome: which title he wold not haue given to that King, if himselfe vnder pretence of being *Gods Vicar* generall in earth had claimed iurisdiction ouer all Christian kiugdomes.

*The Pope had
no iurisdiction in England
in the time
of the Britons.*

Pelagius

The case of Præmunire.

Pelagius the Monke of Bangor about the yere 400. being cited to Rome, refused to appeare vpon the *Popes* citation, affirming, that *Brit.* was neither within his Dioces, nor his Prouince.

After that, about the yere 600. *Augustine* the Monke was sent by *Gregory* the great into England to conuert the *Saxons* to Christian Religion, the *Brittish* Bishops then remayning in Wales regarded not his Commission nor his doctrine, as not owing any duty, nor hauing any dependancie on the Court of Rome, but still retained their ceremonies and traditions which they receiued from the *East* Church vpon the first plantation of the faith in that Iland, being diuers and contrarie to those of the Church of *Rome*, which *Augustine* did endeauour to impose vpon them.

The like doth *Beds* write of the *Irish* Priests and Bishops. For in the yere 660. he reporteth, That a conuocation of the Clergie being called by King *Oswif*, there rose a disputation betweene *Colman* one of our *Irish* Saints, then present in that Synod, and *Wilfrid* a *Saxon* Priest, touching the obseruation of *Easter*, wherein the *Brittish* and *Irish* Churches did then differ from the Church of *Rome*. *Coleman* for the celebration of *Easter* vsed in Ireland, affirmed it was the same *quodbeatus Euägelista Ioannes, discipulus specialiter à Domino dilectus, in omnibus, quibus praeerat, Ecclesij: celebrasse legitur*. On the other part *Wilfr.* alledged, that all the Churches of Christendome did then celebrate *Easter* after the *Roman* maner, except the Churches of the *Brittons* and *Picts*, qui contra totū orbē (said he) *fulto labore pugnāt*. Wherunto *Colman* replied, *Miror quare stolidū labore appellas, in quo tanti Apostoli qui super petitus Domini recumbere dignus fuit, exempla fecerantur. Nunquid reverendissimū patrē nostrum Columbā, & eius successore, viros à Deo dilectos diuinis paginis contraria sapiente aut egisse credendum est?* In this disputation or dialogue, two things may be obserued: first, that at this time the authority of the Bishop of *Rome* was of no estimation in these Ilands: next, that the Primitiue Churches of *Brittany* and *Ireland* were instituted according to the forme and discipline of the *East* Churches, and not of the *West*, and planted by the Disciples of *John*, and not of *Peter*. Thus much for the time of the *Brittons*. For the *Saxons*, though King *Ina* gaue the Peſter pence to the Pope, partly as *Almes*, and partly in recompenſe of a house erected in *Rome* for entertainment of English pilgrimes

pilgrimes, yet it is certaine, that *Alfred*, and *Athelstane*, *Edgar* and *Edmund*, *Canutus*, and *Edward the Confessor*, and divers other Kings of the *Saxon* race did give all the Bishopricks in England *Per annulum & baculum* without any other ceremony as the *Emperour* and the *French King*, and other Christian Princes were wont to doe. They made also severall lawes for the gouernment of the Church: Among others *Saint Edward* begins his lawes with his protestation, that it is his Princely charge, *Vt populum Domini, & super omnia, sanctam Ecclesiam regat & gubernet*. And King *Edgar* in his Oration to his English Cleargie, *Ego (saith he) Conflantini, vix Petri gladium habet: iungamus dextras, & gladium gladio copulemus, ut exsiantur extra Castra leprosi, & pargeant sanctuarium Domini*. So as the Kings of England with their own Cleargie did gouerne the Church, and therein sought no ayde of the Court of Rome. And the troth is, that though the Pope had then long hands, yet hee did not extend them so farre as *England*, because they were full of busines neerer home in drawing the *Emperour* & the *French King*, vnder his yoke. But vpon the conquest made by the *Norman*, he apprehended the first occasion to vsurpe vpon the liberties of the Crowne of England. For the *Conqueror* came in with the *Pope's Banner*, and vnder it won the battaile which got him the garland: and therefore the *Pope* presumed hee might boldly plucke some flowers from it, being partly gained by his countenance and blessing. Hereupon he sent two *Legates* into England, which were admitted and received by the *Conqueror*. With them he called a *Synod* of the Clergie, and deposed old *Stigand* *Archbishop of Canterbury*, because hee had not purchased his *Pal* in the Court of Rome, he displaced many Bishops and Abbots to place his *Normans* in their roomes. And amongst the rest it is to be noted, That the King having earnestly mooued *WWalton* *Bishop of Worcester*, being then very aged, to giue vp his staffe, his answer was, that hee would giue vp his staffe onely to him of whom hee first receiued the same. And so the old man went to *Saint Edward's Tombe*, and there offered vp his staffe and Ring, with these words, *Of thee O holy Edward, I received my staffe and my King, and to thee I do now surrender the same againe*: which proues, that before the *Norman Conquest* the King did invest his Bishops *per annulum & baculum* as I said before.

Thus

The case of Præmunitio.

Thus we see by the admission of the Popes *Legates*, the first step or entrie made into his usurped iurisdiction in England. Albeit the King still retained the absolute power of investing Bishops, and seemed onely to se the aduise and Assistance of the Legates in Ecclesiastical matters, for that no decree passed, or was put in execution, without his Royall assent thereunto. Besides, how farre forth he submitted himselfe to the Pope, it appeareth by a short Epistle which he wrote to *Gregory* the 7. in this forme.

*In the time
of Wyl. Rufus
the Pope at-
tempted to
draw appeals
to Rome but
prevailed not*

*Excellensissimo sancta Ecclesia Pastori
Gregorio, grata Dei Anglorum Rex, & Dux Normannarum Willi-
elmus, salutem cum Amicitia, Hubertus Legatus tuus, Religiose Pa-
ter, ad me veniens ex tua parte me admonuit, ut tibi & successoribus
tuis fidelitatem facerem, & de pecunia quam antecessores mei ad Ro-
manam Ecclesiam misericorditer solebant, melius cogisarem. Num admissi,
alteram non admissi: fidelitatem facere noli, nec volo, quia nec ego
promisi, nec antecessores meos antecessoribus suis id fecisse compserio
Pecunia tributifere annis in Gallia me agenti, negligenter collecta est
nunc vero divina misericordia me in Regnum meum reverso, quod
Collectum est per præsum Legatam mittetur, & quod reliquum est,
per Legatos Lanfranci Archiepiscopi fidelis nostri, cum opportuum
fuerit, transmittetur, &c.*

*But in the time of his next successor, King William Rufus
they attempted to passe one degree farther, that is to draw ap-
peals to the Court of Rome. For Anselme being made Arch-
bishop of Canterbury, and being at some difference with the
King, besought his leauue to goe to Rome, vnder pretence of
fetching his *Pall*. The King knowing he would appeale to the
Pope, denied him leauue to goe, and withall told him, That
none of his Bishops ought to be subiect to the Pope, but the
Pope himselfe ought to be subiect to the *Emperor*, and that
the King of England had the same absolute liberties in his Do-
minions, as the *Emperor* had in the *Empire*: And that it was
an ancient custome and lawe in England, vsed time out of
mind before the Conquest, that none might appealle to the Pope
without the Kings leauue, and that hee that breaketh this lawe
or custome doth violate the Crowne and dignitie Royall, and
he that violates my Crowne (saith he) is mine enemie, and a
traitor. How answere you this, quoth the King? Christ him-
selfe answers you, saith the Archbishop, *Tu es Petrus, & super
hunc pesram, &c.* Wherewith the King was nothing satisfied:
And*

The case of Præmunire.

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And thereupon *Anselme* departing out of the Realme, without licence, the King seised his temporalities, and became so exasperate and implacable towards the Bishop, as he kept him in perpetuall exile during his Raigne, albeit great intercession were made for his returne, as well by the Pope as the King of France. In the time of the next King *Henr. I.* though he were a learned and a prudent Prince, yet they sought to game a further point vpon him, and to plucke a flower from his Crowne of greater value, namely the patronage and donation of Bishoprickes, and all other benefices Ecclesiasticall. For *Anselme* being reuokt and re-established in the Sea of Canterbury, the Bishopricks of *Salisbury*, and *Hereford* fell voyd, Bishoprickes, which the King bestowed two of his Chaplaines. But *Anselme &c.* their Metropolitane did refuse to consecrate them, so as the Archbishop of *Torke* was faine to perorme that Office, who with the Chiefe of the English Cleargie stood with the King, and withstood *Anselme*. Hereupon the King requires him to doe his homage: the Bishop denyes it: the King demands of him whether the patronage and inuestiture of all Bishoprickes were not his rightfull inheritance: the Bishop said it was not his right, because Pope *Urbanus* had lately made a decree that no lay person should give any Ecclesiasticall benefice. This was the first question that euer was made touching the King of Englands right of patronage, and donation of Bishoprickes within his dominions. This new question caused many messages and ambassages to Rome. At last the King writes plainly to the Pope, *Notum habeat sanctitas vestra, quod me vivente (Deo auxiliante) dignitates & usus regni nostri non minuantur, & si ego (quod absit) in tanta me directione ponere, magnates & aur. mei, imo totius Angliae populus id nullo modo patretur.* Besides, *William de Warrenas* the Kings procurator in the Court of Rome, told the Pope that the King would rather loose his kingdome then he would loose the donation of Bishoprickes. The Pope answered, know you precisely Sir, I speake it before God, that for the redemption of my head, I would not suffer him to enjoy it.

After this *Anselme* being received into the Kings fauour, in a Synod of the English Cleargie holden at London in the yere 1107. a decree was made, *Cui annuit Rex Henricus, saith Mat. Paris. that from thenceforth nunquam per donationem, Baculis*

*In the time
of K. Henry
the first, the
Pope vistor-
peth the do-
nation of
Bishoprickes,*

*Histor. Tora-
nalenis. M.
S. in Ar-
chin. Rob.
Cotton Eq.*

Q

Pastoralis

The case of Præmunire.

Pastoralis vel annuli quisquam de Episcopatu, vel Abbatia per Regem, vel quamlibet laicam manum inuestigetur in Anglia. In recompence whereof, the Pope yelded this fauour to the King, that thenceforth no Legate should be sent from the Popes side into England, vnlesse the King required it; and that the Archbishop of *Canterbury* for the time being, should be for euer *Legatus natus*: and *Anselme* for the honor of his See, obtained, that the Archbishop of *Canterbury* should in all generall Councells sit at the Popes foote *tanquam alterius orbis Pape*. Notwithstanding, as the succeeding Popes kept not their promise touching the sending of *Legates*, so this selfe same King, after the death of *Anselme*, broke the decree touching the inuestiture of the Bishops. For hee gaue the Archbishopricke of *Canterbury* to *Rodolph Bishop of London*, saith *Math. Paris*. *Et illum per annulum & Pastoram baculum inuestiuit*, as before he had inuested *Willielmum Gifford* in the Bishoprick of *Winchester*, *contro noui Concilij statuta*, as the same Author reporteth.

In the time of King Stephen the Pope gained appeals to the Court of Rome. The times of the next succeeding King *Stephen* were full of Ciuite dissentions, which made the land wellnie waste, so as *Saint Peters* successor could not take any fish in such troubled waters. Yet during the Kings raigne, they wonne that point of iurisdiction which they attempted to get, but failed thereof in the time of King *William Rufus*; namely, That *appeals* might bee made to the Court of Rome. For in a Synod at *London* summoned by *Henr. Bishop of Winchester* the Popes *Legate*, it was decreed, That *appeals* should be made from Prouinciall Councells to the Pope, before that time *appellaciones in usu non erant*, saith a Monke of that time, *Donec Henricus Winton Episcopus malo suo dum Legatus esset, crudeliter instruxit*. Thus did the Pope vsurpe three maine points of iurisdiction vpon three severall Kings after the Conquest (for of *William Rufus* he could winne nothing)namely vpon the *Conquerour*, the sending of *Legates* or *Commissioners* to heare and determine Ecclesiasti- call causes; vpon *Henr. 1.* the *donation and inuestitures* of Bishop- rickes and other benefices; vpon King *Stephen*, the *appeals* to the Court of Rome.

* *In the time of K. Henry 2. the Pope claymed exemption of Clarkes fro the secular power.*

* Now are we come to King *Henr. 2.* in whose time they made a further encroachment vpon the Crowne, wherby they endeauoured to make him but halfe a King, and to take away halfe

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halfe his Subiects by exempting all Clarks from secular power. Hereupon rose that long and great contention betweene King Henr.2. and *Thomas Becket*, which on *Beckets* behalfe may be rightly termed rebellion and treason: the iust cause and ground whereof was the same, that made the late difference betweene the *Pope* and the *Venetians*. For a Priest had committed a fowle murder, and being thereof indicted and conuictid, prayed the benefit of his Cleargie, which being allowed vnto him, he was deliuered to the Bishop of *Salisbury* being his ordinary, to make his purgation: which the murderer failing to doe, shold by the lawe haue beene degraded, and deliuered backe to the secular power. But the Bishop contemning the law of the land, to enlarge the liberties of the Church, sent his prisoner to *Thomas Becket* then Archbishop of *Canterbury*, who shold him into an Abbey, and so rescued him for the capitall punishment he had iustly deserued.

*A breefe of
Th. Becket's
troubles or
rather trea-
sons.*

This gap of impunitie being once opened, the Cleargie grew so outragious, as the King was enformed of a hundred murders committed by Clarkes, and yet not one of them executed for the same, for that the Archbishop had protected them all after the same manner. For this the King was iustly incensed against the Archbishop, who iustified his doing herein. Whereupon a common counsell as well of the *Bishops*, as of the *Nobility* was called, wherein they did reuiue and re-establish the ancient lawes and customes of the kingdome for the gouernement of the Cleargie, and ordering of causes Ecclesiasticall, whereof these were the principall heads or articles.

*The Consti-
tutions of
Claringdon.*

1. That no Bishop, nor Clarke should depart the Realme without the Kings licence, and that such as obtained licence, should giue sureties that they should procure no hurt or damage to the King or Realme during their absence in forreine parts.

2. That all *Bishopricks* and *Abbeys* being void should remaine in the Kings hands as his owne demesnes, vntill he had chosen and appointed a Prelat thereunto, and that euery such Prelat should doe his *homage* to the King before hee were admitted vnto the place.

3. That *appeals* should be made in causes Ecclesiasticall in this manner: from the Archdeacon to the Ordinary, from the

Q.2

Ordi-

The case of Præmunire.

the Ordinary to the Metropolitane, from the Metropolitane to the *King*, and no further.

4. That *Peter pence* should be paid no more to the *Pope*, but to the *King*.

5. That if any Clarke should commit felony, he should be hanged, if treason, he should be drawne and quartered.

6. That it should be adiudged high treason to bring in *Bulls* of *Excommunication* whereby the Realme should be cursed.

7. That no decree should be brought from the *Pope* to bee executed in England vpon pain of imprisonment and confisca-
tion of goods.

To these and other Constitutions of the like nature made at *Claringdon*, all the rest of the *Bishops* and *greas men* did subscribe and bound themselues by oath to obserue the same absolutely, onely the *Archbishop* would not subscribe, and swearre, but with a *Saving salvo suo ordine & honore sancta Ecclesiae*: yet at last he was content to make the like absolute *subscription* and *oath* as the rest had done, but presently he repented, and to shew his repentance suspended himselfe from celebrating Mass, till he had receiued absolution from the *Pope*. Then he began to maintaine and iustifie the *exemption of Clarkes* againe: whereat the Kings displeasure was kindled anew: and then the *Archbishop* once againe promised absolute obedience to the Kings lawes (See the ficklenes and mutability of your constant Martyr.) The King to bind fast this slippery *Prostew*, called a Parliament of the *Bishops* and *Barons*, and sending for the Roll of those lawes, required all the *Bishops* to set their seales thereunto. They all assented, but the *Archbb.* who protested he would not set his seale, nor giue allowance to those lawes. The *King* being highly offended with his rebellious demeanor, required the *Barons* in Parliament to giue Iudgement of him, who being his subiect would not be ruled by his lawes: *Cito facite mihi iustitia de illo, qui homo meus ligens est, & stare Iuri in Curia mea recusat.* Wherupon the *Barons* proceeding against him, & being ready to condemne him: I prohibite you (quoth the *Archbb.*) in the name of Almighty God to proceed against me, for I have appealed to the *Pope*, and so departed in contempt of that high Court, *Omnibus, clamantibus* faith *Houenden, quo progrederis prodi-
tor? expecta & audi iudicium tuum.* After this he lurked secretly neare the Sea shire, and changing his apparel and name (like a Jesuit

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Iesuit of these times,) he tooke shipping with a purpose to flye to *Rome*, but his passage being hindered by contrary winds, he was summoned to a Parliament at *Northampton*, where he made default wilfully, for which contempt, his temporalties were seised, and his body being attaught, he was charged with so great an account to the King, as that he was found in arreare *thirty thousand markes*, and committed to prison, whence hee found meanes to escape shortly after, and to passe out of the Realme to Rome. He was no sooner gone, but the King sends writs to all the Sherifes in England to attach the bodies of all such as made any *appeals* to the *Court of Rome*: hereupon many messages and letters passing to and fro, all the *suffragans of Canterbury* ioyne in a letter to the Pope, wherein they condemne the fugitiue *Archbishop*, and iustifie the Kings proceedings: Vpon this the *Pope* sends two *Legates* to the King being then in *Normandy* to meditate for the *Archbishop*. They with the mediation of the *French King*, preuailed so farre with *King Henry*, as that he was pleased to accept his submission once againe; and promised the *King of France*, that if he would be obedient to his lawes, he should enioy as ample liberties as any *Archbishop of Canterbury* euer had: and so sent him into England with recommendation vnto the young King his Sonne then lately Crowned, who hearing of his comming, commanded him to forbear to come to his presence, vntill hee had absoluued the *Arch. of York* and others whō he had excommunicated for performing their duties at his Coronation. The *Archbishop* returned answer that they had done him wrong in usurping his office, yet if they would take a solemnē oath to become obedient to the *Popes* comandement in al things concerning the church he would absoluue them. The Bishops vnderstanding this, protested they would neuer take that oath vntesse the King willed them so to do. *K. Henry* the father being hereof aduertised into *France*, did rise into great passion & choler, and in the hearing of some of his seruants vttered words to this effect: *Will no man revenge me of mine enemies?* Wherupon the 4. Gentlemen named in the stories of that time passed into England, and first mouing the *Archbishop* to absoluue the *Bishop*, whom he had excommunicated for performing their duties at the young Kings Coronation: and receiuing a peremptory answer of deniali from the *Archbishop*, they laid violent hands vpon him, and slew him, for

Q. 3

which

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*Foure points
of iurisdiction
vsurped vpon
the crown of
Englaund by
the Pope be-
fore the raigne
of K. John.*

which the King was faine not onely to suffer corporall penance, but in token of his humiliation to kisse the knee of the *Popes Legate*. And this is the abrigenient of *Becketts troubles*, or rather *treasons*, for which he was celebrated for so famous a Martyr. And thus you see, by what degrees the *Court of Rome* did within the space of one hundred and odde yeares, vsurpe vpon the Crown of England foure points of iurisdiction. *viz.* First sending out of *Legats* into England. Secondly drawing of *Appeals to the Court of Rome*. Thirdly, donation of bishopricks and other Ecclesiasticall benefices; And fourthly, exemption of Clarkes from the secular power. And you see withall, how our Kings and Parliaments haue from time to time opposed and withstood this vniust vsurpation.

Now then the *Bishop of Rome* hauing claimed and wel ne re-couered full and sole iurisdiction in all causes Ecclesiasticall, and ouer all persons Ecclesiasticall, with power to dispose of all Ecclesiasticall benefices in England, whereby he had vpon the matter made an absolute conquest of more than halfe the kingdome (for euerie one that could read the *Psalme of Miserere* was a Clarke, and the Clergie possessed the moyne of all temporall possessions.) There remained now nothing to make him owner and proprietor of all, but to get a surrender of the Crowne, and to make the King his *Farmer*, and the people his *Villaines*, which he fully accomplished and brought to passe in the times of King *John*, and of *Henr. 3.*.

*The cause of
the quarrell
betweene K.
John & the
Pope.*

The quarrell betweene the *Pope* and *King John* which wrested the Sceptre out of his hand, and in the end brake his heart, began about the election of the *Archbishop of Canterbury*. I call it *election*, and not *donation* or *investiture*: for the manner of *investing of Bishops* by the *Staffe* and *Ring* after the time of *King Henr. 1.* was not any more vied, but by the Kings licence they were *Canonically elected*, and being elected, the King gaue his Roiall assent to their election, and by restitution of their temporalties did fully invest them. And though this course of election began to be in vse in the time of *Rich. 1.* and *Henr. 2.*, yet I find it not confirmed by any Constitution or Charter before the time of *King John*, who by his Charter dated the fifteenth of January, in the sixteenth yeare of his Raigne, granted this priuiledge to the Church of England, in these words, *viz.*

*Quod qualisque consuetudo temporibus praedecorum non probata
bastenus*

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hactenus in Ecclesia Anglicana fuerit obseruata, & quidquid juris nobis hactenus vnde auctoritas, de cetero in univisis & singulis Ecclesijs & Monasterijs, Cathedralibus & Conventualibus, totius regni Angliae liberæ sint in perpetuum electiones, quorumcumque Prælatorum maiorum & minorum. Salua nobis & hereabus nostris custodia Ecclesiastarum & Monasteriorum vacantium qua ad nos peti-
nent. Promittimus etiam quod nec impediemus nec impediri permit-
timus per ministros nostros, nec procurabimus, quin in univisis &
singulis Monasterijs & Ecclesijs postquam vacuerint prælatura & quæ-
cumque voluerint liberè sint preficiens electores Pastorum, petita ta-
men a nobis prius & hereditus nostris licentia elegendi quam non de-
negabimus nec differemus: Et similiter post celebratam electionem,
noster requiratur assensus, quem non denegabimus, nisi aduersus ean-
dem ratiō. sale proposuerimus, & legitime probauerimus proper quod
non debemus consentire, &c.

When Cano-
nicate election
began first in
England.

Bucto recurre to the cause of his great quarrell with the Pope. The See of Canterbury being voyd, the Monkes of Canterbury suddenly and secretly without the Kings licence elected one *Reignold their Subprior* to be *Archbishop*, who immediately posted away to be confirmed by the Pope. But when hee came there, the Pope rejected him because hee came not recommended from the King. Hereupon the Monkes made suite to the King to nominate some fit person to whose election they might proceed. The King commends *John Gray Bishop of Norwich* his principall Counsellor, who was afterward Lord Iustice of this kingdome, who with a full consent was elected by them, and afterwards admitted and fully inuested by the King. These two elections bred such a contouersie, as none might determine but the Pope, who gaue a short rule in the Case, for he pronounced both elections void, and caused some of the Monkes of Canterbury who were then present in the Court of Rome, to proceed to the election of *Stephan Langton*, lately made Cardinall at the motion and suite of the French King: who being so elected was forthwith confirmed and consecrated by the Pope, and recommended to the King of England with a flattering letter, and a present of fourte Rings set with precious stones, which were of great value and estimation in those daies. Howbeit the King more esteeming this *Iewell of the Crown*, namely, the patronage of Bishopricks, returned a round and Kingly answere to the Pope, That intosiderately to the Pope.
King Johns
round and
Kingly letter
and

A.D. 1215

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and rashly he had cassed and made void the election of the *Bishop of Norwich*, and had caused one *Langton* a man to him vnknowne, and bred vp and nourished amongst his mortall enemies, to be consecrated *Archbishop*, without any due forme of election, and without his Royall assent, which was most of all requisite by the ancient lawes and customes of his Realme. That he merueiled much, That the Pope himselfe and the whole Court of Rome did not consider, what a precious account they ought to make of the King of Englands friendship, in regard that his one kingdome did yeeld them more profit and reuenew than all the other countries on this side the *Alpes*. To conclude, he would maintaine the liberties of his Crowne to the death, he would restraine all his subiects from going to *Rome*. And since the *Archbishops*, *Bishops*, and other Prelates within his dominions were as learned and religious as any other in Christendome, his subiects should bee iudged by them in Ecclesiasticall matters, and should not need to runne out of their owne countrey, *to beg Justice at the hands of strangers*.

The Pope curseth the King, & interdicteth the Realme.

But what followed vpon this? The *Pope* after a sharpe reply sendeth forth a *Bull of malediction* against the *King*, and of *interdictio[n]* against the Realme, whereby all the Churches in England were shut vp, the Priests and religious persons were forbidden to vse any *Liturgies*, or Diuine seruice, to marry, to bury, or to performe any Christian duty among the people. This put the King into such a rage, that he on the other part seised the temporalties of all *Bishops* and *Abbots*, and confiscated the goods of all the Cleargie. Then doth the *Pope* by a solemne sentence at *Rome* depose the King, and by a *Bull* sent into England, dischargeth his subiects of their allegiance, and by a *Legate* sent to the King of *France*, gaue the kingdome of England to him and his successors for euer.

These things brought such confusion and miserie to all estates and degrees of people in England, as the King became odious to all his subiects, as well to the Laytie as to the Cleargie. For as the *Bishops* and religious people cursed him abroad, so the *Barons* tooke armes against him at home, till with much bloudshed they forced him by granting the *great Charter* to restore *King Edwards* lawes containing the antient liberties of the subiects of England. The *Pope* being a spectator of this *Tragedy*,

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gedy, and seeing the King in so weake and desperate estate, sent a *Legate* to comfort him, and to make a reasonable motion vnto him; to wit, that he shoulde surrender and giue vp his Crown and kingdome to the *Pope*, which shoulde be regranted vnto him againe to hold in *Feefarme* and *vassalage* of the *Church of Rome*: And that thereupon the *Pope* would blesse him and his Realme againe, and curse his rebells and enemies in such sort as hee shoulde be better establisht in his kingdome then he was before. In a word, this motion was presently embrased by that miserable King, so as with his owne hands he gaue vp the Crowne to the *Popes Legate*, and by an instrument or Charter sealed with a *Bull* or seale of *gold*, he granted to God and the *Church of Rome* the *Apostles Peter and Paul*, and to *Pope Innocent the third* and his successors, the whole kingdome of *England*, and the whole kingdome of *Ireland*; and tooke backe an estate thereof by an instrument sealed with *Lead*, yeelding yearly to the *Church of Rome* ouer and aboue the *Peter pence* a thousand marks sterlinc, *viz.* seuen hundred markes for *England*, and three hundred markes for *Ireland*, with a flattering fauing of all his liberties and Royalties. The *Pope* had no sooner gotten this conuiance, though it were void in law, but he excōmunicateth the *Barons*, and repeales the *great Charter*, affirming that it contained liberties too great for his subiects, cals the *King* his *vassall*, and these kingdomes *Saint Peters patrimony*, grants a generall *Bull of Provision* for the bestowing of all Ecclesiasticall benefices, and takes vpon him to be absolute and immediat Lord of all. And thus vnder colour of exercising *jurisdiction* within these kingdomes, the *Pope* by degrees, got the very kingdoms themselues. And so would hee doe at this day, if the King would give way to his *jurisdiction*.

But what vse did the *Pope* make of this grant and surrender of the Crowne vnto him? what did he gaine by it, if our Kings retained the profits of their kingdomes to their owne vse? Indeed we do not find, That the *Feefarme* of a thousand markes was euer payd, but that it is all run in arreare till this present day. For the troth is, the *Court of Rome* did scorne to accept so poore a reunew as a thousand markes *per annum* out of two kingdomes. But after the death of King *John*, during all the raigne of *Henr. 3.* his sonne, the *Pope* did not claime a Seigniory or a tent out of *England* and *Ireland*, but did endeauour to conuer

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conuert all the profits of both lands to his owne vse, as if hee had beene seised of all in demesne. For whosoeuer will read *Matth. Parif.* his story of the time of *King Henr. 3.* will lay these things spaken of before, were but the *beginnings of euils.* For the exactions and oppressions of the *Court of Rome* were so continuall and intollerable, as that poore Monke who liued in those times, though otherwise he adored the *Pope*, doth call England *Baalams Aſſe* loaden, beaten, and enforced to speake, doth call the *Court of Rome Charybdis* and *barashrum auaritia*, the *Popes Collectors Harpies*, and the *Pope* himſelte a *Stepfather*, and the *Church of Rome a Stepmother*. He sheweth that two third parts of the land being then in the hands of Churchmen, the entire profits thereof were exported to enrich the *Pope*, and the *Court of Rome*, which was done for the most part by these two waies and meanes. Firstby conferring the best Ecclesiasticall benefices vpon *Italians*, and other strangers resident in that Court, whose farmers and factors in England tooke the profits, turned them into money, and returned the money to *Rome*. Secondly, by imposing continuall taxes and tallages (worse than *Irish cuttings*) being sometimes the tenth, sometimes the fifteen h. sometimes the third, sonderimes the moytie of all the goods, both of the Cleargie and Laytie, vnder colour of maintaining the *Popes* holy warres against the Emperour and the Greeke Church, who were then said to be in rebellion against their Lady and mistresse the *Church of Rome*. Besides, for the speedy leuying and safe returne of these moneyes, the *Pope* had his *Lumbards* and other *Italian Bankers* and *vñwers* resident in *London* and other parts of the Realme, who offered to lend and disburse the moneys taxed, and returne the same by exchange to *Rome*, taking such penall bands, the forme whereof is set downe in *Matth. Parif.* and such excessiue vsury, as the poore religious houses were faine to sell their Chalices and Copes, and the rest of the Cleargie and Laity had their backes bowed, and their estates broken vnder the burthen. Besides, the *Pope* tooke for perquisits and casualties, the goods of all Clarkes that died intestate, the goods of all Vsurers, and all goods giuen to charitable vses. Moreouer hee had a swarne of *Friers* (the first corrupters of Religion in England) who perfwaded the Nobility and Gentrie to put on the signe of the Crosse, and to vow themſelues to the holy warres, which they had no foo-

ner

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ner done, but they were again persuaded to receive dispensations of their vows, & to give money for the same to the *Church of Rome*. I omit diuers other policies then vsed by the *Pope*, *Collectors* to exhaust the wealth of the Realme, which they affirmed they might take with as good a conscience as the *Hebreues* tooke the Iewells of the *Egyptians*. Briefely, whereasthe King had scarce meanes to maintaine his Royall family, they received out of England sevnty thousand pounds sterlē at least, yearly, which amounteth to two hundred and tennethousand pounds sterlē of the moneys currant at this day. Besides, they exported sixe thousand markes out of Ireland at one time, which the Emperour *Fredericke* intercepted. Lastly, the King himselfe was so much deieeted, as at a Royall feaste he placed the *Popes Legate* in his owne Chaire of Estate, himselfe sitting on his right hand, and the *Bishop of Yorke* on his left; *non sine multorum obliquantibus oculis*, saith *Matth. Paris*.

Thus we see the effect of the *Popes* pretended *jurisdiction* within the dominions of the King of England. We see to what calamity and seruitude it then reduced both the Prince and people. Was it not therefore high time to meet and oppose those inconueniences? Assuredly if King *Edward I.* who was the Sonne and heire of *Henr. 3.* had inherited the weaknes of his father, and had not resisted this usurpation and insolencie of the *Court of Rome*, the *Pope* had beene proprietor of both these Ilands, and there had beene no King of England at this day.

But King *Edward I.* may well be styled *vindex Anglie liberatis*, the *Moses* that deliuered his people from slauery and oppression: and as he was a braue and victorious Prince, so was he the best *Pater patriæ* that euer reigned in England since the *Norman Conquest*, till the Coronation of our gracious Soueraigne. At the time of the death of his father he was absent in the warre of the holy land, being a principall Commander of the Christian Armie there, so as he returned not before the second yeare of his raigne. But hee was no sooner returned and crowned, but the first worke he did, was to shake off the yoke of the *Bishop of Rome*. For the *Pope* hauing then summoned a generall Counsell, before he would licence his *Bishops* to repaire vnto it, he tooke of them a solemne oath, that they should not receive the *Popes* blessing. Againe, the *Pope* forbids the King to warre

King Edw. I.
*oppoſeth the
Popes usur-
pation.*

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warre against *Scotland*, the King regards not his prohibition : he demands the first fruits of Ecclesiastical liuings, the King forbids the payment thereof vnto him. The Pope sendeth forth a general *Bull* prohibiting the Clergie to pay subsidies or tributes temporall Princes. A tenth was graunted to the King in Parliament, the Cleargie refused to pay it : the King seifeth their temporalties for their contempt, and got payment notwithstanding the Popes *Bull*. After this hee made the statute of *Mortmain*, wherby he brake the Popes chiefe net, which within an age or two more would haue drawne to the Church all the temporall possessions of the kingdome, &c. Againe, one of the Kings subiects brought a *Bull of excommunication* against another, the King commandeth he should bee executed as a traytor, according to the ancient law. But because that lawe had not of long time beene put in execution, the Chancellor and Treasurer kneeled before the King, and obtained grace for him, so as he was onely banished out of the Realme. And as he iudged it treason to bring in *Bulls of excommunication*, so he held it a high contempt against the Crowne, to bring in *Bulls of Prouision*, or *breefes of citation*, and accordingly the law was so declared in Parliament 25. *Edw. 1.* which was the first statute made against *Prouisors*, the execution of which law, during the life of *King Edw. 1.* did well ne abolish the vsurped iurisdiction of the *Court of Rome*, and did reuiue and restore againe the ancient and absolute Soueraigne of the King and Crowne of England.

*E. 2. suffereth
the Pope to
vsurpe again*

His successor K. *Edw. 2.* being but a weake Prince, the Pope attempted to vsurpe vpon him againe, but the Peeres and people withstood his usurpation : And when that vnhappy King was to be deposed, amongst many articles framed against him by his enemies, this was one of the most heinous, that hee had giuen allowance to the *Popes Bulls*.

Againe, during the minority of *King Edw. 3.* and after that, in the heat of the warres in *France*, the Pope sent many *Breefes* and *Bulls* into England, and at last presumed so farre, as that he gaue an *Italian* the title of a *Cardinall* in England, and withall by his *Bull* gaue him power to bestow all Ecclesiasticall promotions as they should fall void from time to time. This moued the King and the Nobility to write to the Pope, to this effect : wee and our ancestors haue richly indowed the Church of England,

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land, and haue founded Abbeyes and other religious houses for the iurisdiction of our people, for maintenance of hospitalite, and for the aduancement of our countrymen and kinsmen. Now you prouide and place strangers in our benefices, E.3. resisteth
the usurpa-
tion of the
Pope. that come not to keepe residence thereupon, and if they come, vnderstand not our language, and some of them are subiects to our mortall enemies : by reason whereof our people

are not instructed, hospitalite is not kept, our schollers are vnprefferred, and the treasure of the Realme is exported. The Pope returneth answer, That the Emperour had lately submited himselfe to the *Church of Rome* in all points, and was become the Popes great friend, and in menacing manner aduised the King of England to doe the like. The King replyes, That if the Emperour and *French King* both should take his part, he was ready to gine battaile to both, in defence of the liberties of his Crowne. Hereupon the severall statutes against *Promisors* before reelected, were put in execution so severely, as the King and his subiects enjoyed their right of patronage cleerly ; and their exemption of Clerkes tooke no place at all, for that the *Abbot of Walsham*, and *Bishop of Winchesteſter* were both attainted of high contempts, and the *Bishop of Ely* of a capitall offence, as appeareth in the Records of this Kings raigne. Yet during the no[n]tage of *Richard. 2.* they began once againe to encroach vpon the Crown, by sending *Legates*, and *Bulls*, and *Breefes* into Englang, whereof the people were so sensible and impatient, as that at their speciall prayer this law of *16. Rich. 2.* whereupon our King Rich. 2 indictment is framed, was enacted, being more sharpe and penall, than all the former statutes against *Promisors*. And yet against this King, as against *Edw. 2.* it was objected, at the time of his depriuation, that he had allowed the Popes *Bulls*, to the enthralling of the Crowne.

After this in the weake time of King *Henr. 6.* they made one attempt more to reviuie their vsurped iurisdiction, by this policy, The Commons had denied the King a Subsidy, when he stode in great want of monyes ; The *Archbishop of Canterbury* and the rest of the Bishops offered the King a large supply of his wants if he would consent, that all the lawes against *Promisors*, and specially this law of *16. Rich. 2.* might bee repealed. But *Humphrey Duke of Gloucesther*, who had lately before cast the Popes *Bull* into the fire, did likewise cause this motion to be rejected.

R

So

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So as by speciall prouidence these lawes haue stood in force euen till this day in both these kingdomes.

*The Evi-
dence against
Lalor.*

Then the *Asturney generall* descended to the euidence, wherby he prooued fully all the parts of the indictment. First, it was prooued by *Lalors* owne confession vpon seuerall examinations taken before the *Lord Depuite*, and *Lord Chancellor*, and others, that he had accepted the office and title of *Vicar Generall* in the Dioceses of *Dublin*, *Kildare*, and *Fernes*, by vertue of the *Pope's Bull*. Secondly, it appeared by the copies of sundry letters found among his papers at his apprehension, that hee styled himselfe the *Pope's Vicar*, in this forme; *Robertus Dublincen. & Kildaren. & Fernen. Diocas. Vicarius Apostolicus*. Thirdly, there were produced the copies of diuers Acts, & Instruments written for the most part with *Lalor* owne hand, some of institutions of Popish Priests to benefices, others of dispensations with marriage within the degrees, others of diuorces, others of dispensation for non payment of Tythes. Wherby it was manifestly prooued, that hee did execute the *Pope's Bull*, in usurping and exercising Episcopall iurisdiction as *Vicar Generall* of the Sea Apostolike, within the Dioceses before named.

To this euidence he made a threefold answere, first, that hee was no suiter for the office of *Vicar generall*, but it was imposed on him, and he accepted *virtute obediensia*, onely to obey his Superiors: next, That he did exercise the office of *Vicar generall in foro conscientie tantum*, and not in *foco iudicij*. And lastly, that those copies of institutions, dispensations, and diuorces were many of them written with his mans hand, as prece-dents of such Acts and instruments, without his priuity or direction. Hereupon *Sir James Ley* chiefe Justice told him, that he could not well say, that he accepted that vnlawfull office *virtute obediensia*, for there was no vertue in that obedience: that he ow'd an obedience to the lawe, and to the King, who is the true *Superior, and Soueraigne* ouer all his subiects, and hath no Peere within his dominions, and that the Superiors, whom he meant and intended, were but usurpers vpon the Kings iurisdiction, and therefore this excuse did aggrauate his contempt, in that it appeared hee had vowed obedience to those who were apparent enemies to the King & his Crown. And though it were manifest that he exercised iurisdiction in *foco iudicij* for

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euery institution is a iudgement, and so is euery sentence of diuorce)yet were his offence nothing diminished, if he had executed his office of *Vicar generall in foro conscientie tantum*, for the court of mans conscience is the highest tribunall, & wherin the power of the keyes is exercised in the highest degree.

Hereunto the *Attorney generall* tooke occasion to adde thus much, That *Lalor* had committed these high offences not onely against the lawe, but against his owne conscience, and that he was already condemned *in foro conscientie*. For that he vpon his second examination had voluntarily acknowledged himselfe not to be a lawfull *Vicar generall*, and that he thought in his cōscience, he could not lawfully take vpon him the said office. He hath also acknowledged our Soueraign Lord K.*James* to be his lawfull, Chiefe, and Supreame Gouernour, in all causes as well *Ecclesiasticall* as *Civile*, and that he is in conscience bound to obey him in all the said causes, and so forth as it is contained in his acknowledgement or confession before set downie, which being shewed foorth by the *Attorney generall*, the Court caused it to be publikely read, and therupon demanded of *Lalor*, if that were not his free and voluntary confession signed with his owne hand, and confirmed by his oath, before the Lord Deputie and Counsell. He was not a little abashed at the publishing of this acknowledgement and confession, in the hearing of so many principall Gentlemen, to whom he had preached a contrary doctrine: therefore said he, the shewing forth of this confession is altogether impertinent and besides the matter. Howsoever hee could not deny but that he made it, and signed it and swore it, as it was testified by the Lords Deputie and the rest.

Then was it demanded of him, whether since the making of this confession, he had not protested to diuers of his friends, that he had not acknowledged the Kings supremacie in *Ecclesiasticall causes*: his answer was, That indeed he had said to some of his friends who visited him in the *Castle of Dublin*, that he had not confessd, or acknowledged, that the King was his Supreame Gouernour *in spirituall causes*, for that the truth is, in the confession there is no mention made of *spirituall causes*, but of *Ecclesiasticall*.

This is a subtile euasion indeed, said the *Attorney generall*, I pray you what difference doe you make between *Ecclesiasticall causes*,

*Lalors con-
fession pub-
likely read.*

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causes, and spirituall causes. This question said *Lalor* is sudden and vnapected at this time, and therefore you shall doe well to take another day to dispute this point. Nay, said the *Attorney generall*, we can neuer speake of it in a better time, or fitter place, and therefore though you that beare so reuerend a title, and hold the reputation of so great a Clarke, require a further time, yet shall you heare, That we Lay men that serue his Maiestie, and by the dutie of our places are to maintaine the iurisdiction of the Crowne, are neuer so vnprovided but that we can say somewhat touching the nature and difference of these causes.

*When the
distinction of
Ecclesiastical &
spirituall causes,
from Ciuite
and temporall
causes began
in the world.*

First then, let vs see, when this distinction of Ecclesiastical or spirituall causes, from Ciuite and temporall causes, did first begin in point of iurisdiction. Assuredly for the space of three hundred yeares after Christ, this distinction was not knowne or heard of in the Christian world. For the causes of *Testaments*, of *Marrimonie*, of *Bastardy*, and *Adultery*, and the rest which are called Ecclesiastical or spirituall causes, were merely Ciuite, and determined by the rules of the *Ciuite law*, and subiect onely to the iurisdiction of the *Ciuite Magistrate*, as all *Ciuitans* will testifie with me.

But after that the Emperours had received the Christian faith, out of a zeale and desire they had, to grace and honor the learned and godly *Bishops* of that time, they were pleased to singe out certayne speciall causes, wherein they granted iurisdiction vnto the *Bishops*: namely, in cases of *Tybs*, because they were paid to men of the Church: In causes of *Marrimonie*, because marriages were for the most part solemnized in the Church: In causes *Testamintary*, because testaments were many times made *in extremis*, when Churchmen were present, giving spiritual comfort to the testator, & therfore they were thought the fittest persons to take the probates of such *testaments*. Howbeit these *Bishops* did not proceed in these causes according to the Canons and decrees of the Church (for the *Canon law* was not then hatched or dreamt off) but according to the rules of the *Imperiall law*, as the Ciuite magistrate did proceed in other caules, neither did the Emperours in giuing this iurisdiction vnto them, give away their own Supreme and absolute power, to correct and punish these judges, as well as others if they performed not their severall duties. This then is most certain, that the

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the primitive iurisdiction, in all these causes, was in the *Civile magistrat*e, and so in right it remaineth at this day, and though it be derived from him, it remaineth in him, as in a fountaine. For every Christian Monarch (as well as the godly Kings of Iuda) is *custos viriusque tabula*, and consequently hath power to punish not onely Treason, Murder, Theft, and al maner of force & fraude, but incest, adultery, vsury, petiury, simony, sorcery, idolatry, blasphemy: neither are these causes in respect of their owne quality and nature, to be distinguished one from another, by the names of *Spirituall* or *Temporall*; For why is *adultery* a *spirituall cause*, rather than *murther*, when they are both offences alike against the *second table*: or *idolatry* rather then *perjury*, being both offences likewise against the *first table*. And indeed if wee consider the *natures* of these causes, it will seeme somewhat absurd, that they are distinguished by the name of *spirituall and temporall*, so to speake properly, that which is opposed to *spirituall*, should be termed *carnall*: And that which is opposed to *temporall* should be called *eternall*. And therefore if things were called by their proper names, *adultry* should not be called a *spirituall offence*, but *carnall*: But shall I expresse plainly and briefly, why these causes were first denominated, some *spirituall* or *Ecclesiasticall*, and others *temporall* and *cruel*?

Truely, they were so called not from the *nature* of the causes, as I said before, but from the *quality* of the persons, whom the Prince had made judges in those causes. The Cleargie did study *spirituall things*, and did profess to liue *secundum spiritum*, and were called *spirituall men*, and therefore they called the causes wherein Princes had giuen them iurisdiction, *spirituall causes*, after their owne name and quality. But because the *Lay magistrates* were said to intend the things of this world, which are *temporall* and *transitory*, the Cleargie called them *secular* or *temporall men*, and the causes wherein they were judges, *temporall causes*. This distinction began first in the *Courts of Rome*, where the Cleargie hauing by this iurisdiction gotten great wealth, their wealth begot pride, their pride begot ingratitude towards Princes, who first gave them their iurisdiction, and then according to the nature of all vngratefull persons, they went about to extinguish the memory of the benefit: for whereas their iurisdiction was first derived from *Cesar*, in the execution whereof they were *Cesars judges*, so as both their Courts

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and causes, ought still to haue born *Cesars image & superscripti-*
on, as belonging vnto *Cesar*. They blotted *Cesars* name out of
the style of their Courts, and called them *Courts Christian*, as if
the Courts holden by other magistrates had bin in comparison
but Courts of *Ethnickes*, and the causes which in their nature
were meereley *Ciuite*, they called *Spirituall* and *Ecclesiasticall*. So
as if the Emperour shoulde challenge his Courts, and causes a-
gaine, and say, *Reddite Cesari, que sunt Cesaris*. they would all cry
out on the contrary part and say, *dare Deo que sunt Dei*, our
Courts beare the name and title of *Christ*, the superscription of
Cesar is quite worne out, and not to be found vpon them. And
this point of their policy is worth the obseruing, that when
they found their iurisdiction in matrimoniall causes, to be the
most sweet, and gainefull of all other (for of *Matrimony* they
made matter of money indeed) to the end that *Cesar* might ne-
uer resume so rich a perquisit of their spirituall iurisdiction,
they reduced *Matrimony* into the number of the 7. *Sacraments*.
After which time it had beene *sacrilege*, if the *Ciuite magistrate*
had intermedled with the least matter that had relatiou to Ma-
trimonic, or any dependancie thereupon. So then yet appea-
reth, that all causes whereof *Ecclesiastical* or *Spirituall* persons
haue cognitans, or iurisdiction by the grants or permission of
Princes, are called *Ecclesiastical* or *Spirituall causes*. And as all
their *Courts* are called *Spirituall Courts*, so all causes determina-
ble in those Courts are called *Spirituall causes*. And therefore
where M. *Lalor* hath acknowledged the Kings Maiestie to bee
Supreme Gouvernour in all *Ecclesiastical causes*, he hath therein
acknowledged the Kings Supremacie in all *Spirituall causes*,
wherin he hath but rendered to *Cesar* but that which is *Cesars*,
and hath giuen vnto his Maiestie no more, than all the *Bishops* of
England haue yeelded to his predeceffors, not onely in this lat-
ter age, but also in former times both before and since the *Con-
quest*, as hath bin before at large expressed.

Here the day being farre spent, the Court demanded of the
prisoner, if he had any more to say for himselfe, his answer
was, That he did willingly renounce his office of *Vicar gene-
ral*. And did humbly craue his Maiesties grace and pardon.
And to the end, he desired the Court to mooue the L. *Deputy*
to be fauourable vnto him. Then the Iury departed from the
Barre, and returning within halfe an houre, found the prisoner
guiltie

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guilty of the contempts whereof he was indicted. Whereupon
the *Solicitor generall* mooued the Court to proceede to
judgement: And Sir *Dominicke Sarfield*, Knight, one
of the Iustices of his Maiesties chiefe place
gave iudgement according to the forme
of the statute, whereupon the indi-
gment was framed.

FINIS.



LE
PRIMER RE-
PORT DES CASES
ET MATTERS EN LEY
resolues & adiudges en les Courts
del Roy en IRELAND.

Collect & digest per S^r.

JOHN DAVYS Chiualer, Attorney
Generall del Roy en cest
Realme.

Liber librum aperit.



LONDON,
Printed for the Company of

Stationers: 1628: Act fa
ut est fide impunit a Dublin 1615. m³
la foy, del preface, et del cap^e de la
maniere a plus large, q^e ioy, mes m³
tous aut^e cap^e ilz record

Le Case de Customes.

de meaul. hi. g. 8. d. h. 300. woolfels assent. John Lat de Ryde. xiiij. g. 4. d. Et est desire note, q chesteus factis d meaul
quantois a 6. stone. et chesteus stone 1.4. pound, s h. Lat de Ryde est 29. dimes, & chose dimes 2. mises.

Cest est le ancien custome payable p chesteus Denys p l expatriation des commodities auant que les marchans de la tenuent devant le tressor port plus, q remouill de port, & autres franchises a ces grants q le chart de 11. E. 1. 2. Just

3 Le Nouel & petit custome est 3. d. de le pound payable a 20 marchants stranges roialme, q toutes commodities pous impostaes & exportees come est appellee in l dit chart de 11. E. 1.

3 Prisage, est custome paze de wines q toutes sortes, se est en centengz, tonnes de Wine hors de chesteus Mies inde que, 20. tonne ou plus, l un tunne de la pris de devant l mes del Mies, & l autre derriere le Mast. Et si ceo q cest custome est part des marchandises importees, & prisie iaprecie est appelle Prisage.

Et cest custome de Prisage fait payable en Angleterre p toutes marchants Denys, & Aliens devant le dit chart de 11. E. 1. p le Roy require al Marchants stranges pates : q en meame le chart est exquale que en consideration de ceo, les Marchants stranges ont grant d payer al ton q les bess Numeus cultans, o. l. de quelibet Dolio vni quod adducunt vel adduci facient infra regnum, &c. Si custome d 20. del tonne est ore, en Angleterre appelle Butelerage, & paie le 20. tonnes Marchants stranges, vi. stat de carreer ad Scacc. 15. E. 1. et conform lais d. rooy isti p le 10. decembre 1290. a. d.

Et son est la autre de deux feusts dutes, qui sont proprement appel customes,

Sur le Original de ces customes.

1 Le dit ancien & geund custome est parcel si ancien entierance de la Corone, & ry tenuent que la Corone mesme, Inheret sceptro, & estat de common droit, et non roialme, il n'ayant estat autre au herenolance des Specchants, ou p Act de Parlement. Dier 1. Eliz. a 1. g. 1. Et son entieramente fait paistement del Ratis, grover, et autres coquillages del roialme, vix 4000. woolfels, de 1000. stuns argents, per les autres depouissances de terre,

* 2. Just. 58 p. 59. 1. a. Cols.
pros p. debors argents et
recors p. wo. fiels grantal
Roy p. Parlament in 3. Eliz.

Payable pur Marchandises

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petre, fauina industrie des inhabitançes, & sont: Reserç les
Mouzall riches de Engleterre. Car invention & industrie
des homes, ont donne à produire Tynne, & Plombe, & Draies,
& Iron en general Alguen. Apres les 3. p̄mier commodityes,
viz. Wooll, Woolfels, & Hydes furent moyennement & ant-
entremis d'is, les Staple commodityes del Realme (comme
que par le Statute de 27. E. 3. c. 1. Plombe soit amy declare
desire un Staple commoditye, & par ceo cestuy que oblige
en Statute staple, consiste que il estindeut, Pro lanis, corljs &
plumbis, &c.) Et furent appelle Staple commodityes, par
ceo que furent destit post al Staple del Roy, destit exportees
la, & nomz aillors, & le melior Collection des Customes d'is
al Roy. Vide les Statutes de 27. E. 3. cap. 1. & 43. E. 3. c. 1.
D'is est expesse en quoy villes de Engleterre, Irelond, &
Gales les Staples del Roy furent establish par le exporta-
tion de ceur commodityes. Et appiert auxy per divers stat-
utes, que Caleys fuit astur foiz appoint par un general
Staple, vnoz ceo fuit toll & ouïed arere, & les autres Staples
reestablish.

¶ 29. pur euz, 3. p̄mier commodityes tant seulement viz:
Wooll, Woolfels, & Hydes, le dit antient & certame Custome
fuit due & payable. Car pur Plumbe, comme que fuit dit un
Staple commoditye, le petit Custome de 3. d. sur le pound can-
tum fuit pay, come appiert par le Statute de 27. Ed. 3. Cap. 1.
Et in libr. Rubro Scacar. hic fol. 8. a.

Et que le Roy ad estate de coherittance en cest Grand &
Ancien Custome appiert plenirement, 3. r. H. 8. Dier 43. b.
ou estdit, que Custome & inheritance del Roy p̄t soule
de Compton ley, & Subsidie est un tenu assesse per Marchant
Stranger. Vide auxy, 1. Mat Dier 9. ou le Roy R. ad grant
licencie al un Merchant stranger, de transporter toutes Marchan-
dises payant pro Custome de subsidies tot & taars de
nacionum summas, quot & quantas sicut Anglos marchant
du Roy p̄pauoit, & nos vler. Et fuit estable per toutz
les Justices, que apres le mort del E. 6. le grand fuit tenu
par le Custome, & boyde par le Subsidie: pur ceo que le
Roy ad inheritance en le Custome, sans prerogative autre
a son Roy, & en les Subsidies il n'avoit autre bispot
pur son bte, per act de Parlement. Illint. 9. H. 6. 12. a. Le
Roi au p̄t de sa Roine Aliene, Ex magna Costuma

Le Cas de Customes.

de London : que est anguiche, que le Roy ad geainder estate
en le Grand Custom que par son die demeine : Et p ceo,
le opinion de Babington la, que le Roy nad enheritance en
le Grand Custom, mes en le petit custome tantum , ne ad
aucun colonne de reason. Illint per le estatute de 18.Hen.6.
Est prouide, que les Gages des Justices seront perpetu-
ellement pay hors des premier deniers provenants des Ca-
somes, que ne puissot estre, si le roy ne auoit estate de per-
petuitie en les Customes 1.H.7.4.2. D'attablissement, est un
rule infallible, que si home ad chose de common droit, & per
prescription, que si ad estate de ses simple en melme la chose
est de particular estate le commencement poet, & doet estre
monstre, 2. H.7.15.2.

Mes pur ces que chescun chose que est due de common
droit, et p prescription, doet auer reasonable cause de Co-
mencement, fuit note & obserue que , cest Custome fuit
primerment pay al Corone, pur 4. principall causes, ou
reasons.

1. Pur Conge de departer le Realme, & de cartier les co-
modites del Realme hors de ceo, Vide Diet 1.Eiz.165.b.
& le estatute de 18.E.3.cap.3.

2. Pur le interest que le Roy ad en le Mer, & en les Bra-
ches de ceo, 2. Assis. pl. 9. 15. Eliz. Dier 3. 6.b. 4. 56.p.m.

3. Pur ceo, que le roy est Gardien de tous les Ports &
baieux del Realme, qui sont Ostia seu Iauex regni, & le roy
est Custos rotios regni.

4. Pur waftage, & protection des marchants sur le Mer,
vers les ennemis del Realme, & vers pirates, & soudres co-
mon ennemis de toutes nations.

5. Le petit & nancel Custome payable per Merchant Mer-
gans soulement auver commencement en temps, Ed. 1. En
demaner ce temps, les dutes payable per Merchant Mer-
gans p toutes chose comodites importes (except wines)
& pur toutes chose commodites exportes(except les dites
comodites de Wooll, Woolfels, & Hydes) sur le bocage
du roialme, pur le roy pur son prerogative Prise a 10 bles, & si son
royalme tantz, & tierce partions de tout marchandise, quant a
la plus forte, pur mesme prises, quant auerant toutes chose
susceptibles, H.Q. 1616. 1617. 1618. 1619. 1620. 1621. 1622. 1623. 1624. 1625. 1626. 1627. 1628. 1629. 1630. 1631. 1632. 1633. 1634. 1635. 1636. 1637. 1638. 1639. 1640. 1641. 1642. 1643. 1644. 1645. 1646. 1647. 1648. 1649. 1650. 1651. 1652. 1653. 1654. 1655. 1656. 1657. 1658. 1659. 1660. 1661. 1662. 1663. 1664. 1665. 1666. 1667. 1668. 1669. 1670. 1671. 1672. 1673. 1674. 1675. 1676. 1677. 1678. 1679. 1680. 1681. 1682. 1683. 1684. 1685. 1686. 1687. 1688. 1689. 1690. 1691. 1692. 1693. 1694. 1695. 1696. 1697. 1698. 1699. 1699. 1700. 1701. 1702. 1703. 1704. 1705. 1706. 1707. 1708. 1709. 1709. 1710. 1711. 1712. 1713. 1714. 1715. 1716. 1717. 1718. 1719. 1719. 1720. 1721. 1722. 1723. 1724. 1725. 1726. 1727. 1728. 1729. 1729. 1730. 1731. 1732. 1733. 1734. 1735. 1736. 1737. 1738. 1739. 1739. 1740. 1741. 1742. 1743. 1744. 1745. 1746. 1747. 1748. 1749. 1749. 1750. 1751. 1752. 1753. 1754. 1755. 1756. 1757. 1758. 1759. 1759. 1760. 1761. 1762. 1763. 1764. 1765. 1766. 1767. 1768. 1769. 1769. 1770. 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de son Roigne, en faveur des Merchant strangers, & à tra-
her leur commerce, Remit a eux tous p'stles, & grants a
eux d'ivers autres p'mulgat's. Et pro supradictis libertati-
bus obtinendis, & p'stis remittendis (eux sont les parois de
charter) supradicti Mercatores vniuersi & singuli pro se, &
omnibus alijs de partibus suis, concorditer & uanimiter con-
cesserunt si s'ils payeront al toy, & ses heret's Tres denarios de
libra p' tous Merchandises imported ou exported y eux,
comme est expresse plus particulairement en le dit charter, que
est destre troue en le office de chiese Remembraunce en le
Eschequer del Engletere, & in libro Rubro Scaccarij hic. Et
cest charter del E. 1. en tous points, fait ratifie & confirme
par act de Parliament, 27. E. 3. c. 26. Et ceo est le originell
du petit Custome.

Mes est destre note, que cest petit custome p' foizaine
commoditie's, fait accept per le Roy, quant aysque petit
quantity de tiels foizaine wares sunt import en Engletere.
Car en temps Edw. 1. Et appes ceo, en temps Edw. 3. les
native commodities de Engletere exported furent de
greinder quantite & value per 2. parts de 3. al meines,
que les foizaine marchandises imported: per que le roy
E. 3. ralotz cy grand reuenue hors del native commodities
de ses dominions: que est note de bone husbandrie en cest
toy. Car Oportet Patrem familias Vendac e esse, & non En-
camem. Come Car le seignior disoit. Mes que est toutz contra-
ry: Car a cest temps, le Outgate e meins que le Ingate: les
foizaine wares imported sont de greinder quantite & value
per 1. pts que nostre native commodities exported. Que
est graund honte a nostre Nation, destre illine enamoys que
les Mercury & Grocet wares imported per strangers, & à
expender sur eux plus que le value de tous les Staple &
reali commodities de nostre Pais: que sera en sine le ruin
del Commonwealth.

3. P'stage de wines, est amy custome due p' prescripti-
on, & parcel del ancient enherittance de la corone. Et que le
Roy ad enherittance en le p'stage de wines, appert per
les charters grants al citizens de London, & al cent de
les Cinqe Ports destre discharge de p'stage en toutes
partz, a toutes tourz. Vnde statut 1. H. 8. cap 5. Et le sou-
teur de Raymond ad estate de enherittance en le p'stage de
wines

P'stage de wines
2. Just 59 p. auant

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wines en ceul Realme per greame del Roy. Et le chartre
de London fuit allois en cest point en le Eschecquer de
Engleterre, 14. Eliz. Mes le questiob la fuit, si un Citisen de
London q' ne ad famelij ne pay Scot & Lot, mes sojourne
en le mealon dum autre, auera le benefice del dit Charter.
En le argument de quel Case, Coke donques Attorney
General misoit cest difference de citileng, viz. que il y ad
citisen Nomine, citisen Re, & citisen Re & nomine. Mes fuit
re solon que solement le citisen Re & nomine, viz. celuy
que est fermain de London, y est auxy inhabitant, & pay
Scot & Lot la secrer free de Prisage per le dit Charter. Pur
l'original de Butlerage que est pay per Marchant strangers,
ceo auoit commencement per le Charter de 31. E. 1. come
est auantdit, y est limit destre pay al toy & ses heret en perte
permettie.

Et ceo est le Nature, Original, & Difference de les
duties payable pur marchandises, queus son pro-
prement appell Customes, & sont le enheritance de la Co-
rone.

nous gulfidus & Parkant

Subsidies auxy son dutie payable pur marchandises ex-
ported & imported, mes sont grant per act de Parlia-
ment Dier 31. H. 8. 43. b. 1. Mar. Dier 92. a. Et sont de 3.
divers sortes, accordant al diversite des commodites, &
son appell.

Aydes ou Subsidies esteant grant hors des dits nativ

commodites, viz. Wooll, Woolfels, & Hydes, ultra & p-

ter le antient Custome auantdit.

Tunnage, grant hors de Wines de tous sortes, ultra &
pter le Prisage, & le dit Custome de 25. de Dolio grant y
a le Charter de 31. E. 1. qui appell Butlerage.

Poudrage, grant hors de tous commodities imported
& exported, except Wines, & les Staple commodities

auantdit, & payable per Merchant strangers, ultra & p-

ter le Petit custome.

Pur l'original de ces duties.

Aydes & Subsidies payable hors des dits Nativ & sta-
ple commodities exported, ne fueront sonemfois grant
per Parliament, deuant le temps del E. 3. mes a ceul Roy
pour maintenance de ses Guerres en France, per parla-
ment

+ Aydes & Subsidies

payable pur Merchandises.

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ment, i 4. E. 3. (que fuit le p̄mier an de son raigne à France) un Subsidy fuit graunt de 40. £. hors de chescun Hache & wool. 40. £. & 300. Woolfels, & 4. £. hors de chescun Last de Hydes. Et ceo de continuer pur un an tantum, & que apres les Merchantes paientent lorsque l'anciente custome.

2. Apres ceo p̄ Parliament 13. E. 3. un Subsidy fuit greve al dit Roy de 50. £. sur chescun Hache de Wool. 50. £. sur chescun 300. Woolfels, & 5. £. sur chescun Last de hydes.

3. Per Act d'Parliament 31. H. 6. un Subsidie fuit graunt al dit Roy de 43. £. iiiij. 6. hors de chescun Hache de Wool, et 43. £. iiiij. 6. de chescun 240. Woolfels gemes appes en meisme l'Parlement cest Subsidie fuit abate, & reduce al 33. £. iiiij. 6. pur Hache de Wool, & 33. £. 4. 6. pur 240. Woolfels, & l'parlement limite pur 5. ans tantum. Il fut que ceut Yds ou subsidies ne fueront del un certaine quantite, ou continuance.

4. jusques al temps del E. 6. a quel Roy, en le p̄mier Parliament de son raigne fait grant un Subsidie de 33. £. 4. 6. de chescun Hache de Wool 33. £. iiiij. 6. & chescun 240. Woolfels, & iiij. £. vi. 6. viij. 6. de chescun Last de Hydes exposé par Denizens. Pur chescun Hache de Wool exposé par Aliens, iiij. £. 6. 6. iiiij. 6. et pur chescun 240. Woolfels, iiij. £. 6. 6. 8. 6. 3 pur chescun Last de Hydes, 3. £. 13. 6. 4. 6. Et cest Subsidie grant de continuer durant le vie naturall del rooy & puis le mort de cest rooy, mesme le Subsidie ad estre grant al M. Marie, M. Elizabeth, & al nostre Seignior le rooy, que ore est, durant lour seuerall vies p̄ general Acte de Parliament.

5. 6. 7. Turnage, que est Subsidie hors de wines & toutes draps, fuit p̄mierement graunt pur Parliament 5. R. 2. illi 1. £. de chescun Tunne de wine destre importez en Angleterre fuit graunt al Roy pur 2. ans, & ceo fuit pur maintenance de la flote sur le Mer, a supprimer les pirates. Apes appes à Parliament 3. Ed. 4. Turnage fuit graunt al eul rooy pur terme de son vie naturall en ces maneres, viz. 3. £. pur chescun Tunne de wine, & (outre ceul 3. £.) pur chescun tunne de biere ou biay, 3. £. plus. Vide statut 12. H. 4. cap. 1. Cest Subsidie fuit appes grante al H. 3. & H. 6. que estoit abrogue en temps E. 6. que de chescun Tunne de Wine & Biere pur 12. £. & 6. 6. pur draps & puis le temps del E. 6. cest Subsidie à Turnage

grant p̄ platt a 200 longs

2. Turnage

Le Cas de Customes.

ad estre grant en Engleterre p leuer all Actz de Parliament
al M. Mary, M. Eliz, &c al nōtre seignior le roy que oze est,^{5.6.7.}
durant lour seuerall natuall vies.

3. Pondage.

3. Pondage que est subsidie grant hors de tous commo-
dities exported et imported except wines, et les auntient
Staple wares, ut supra, & payable p tous merchants De-
nubeng et Aliens, est vicefina pars del balew des Merchants
dites, viz. xij d. de le pound, et fait primement graunt per
Parliament en Engleterre 31. H. 6. durant le vie de cest
Roy : quel graunt fait immediatement resume. Mes ays
ceo, viz. 3. E. 4. cest subsidie de Pondage fait graunt al dit
Roy durant son vie : vide stat. 12. E. 4. cap. 3. & puis mesme le
Subsidie fait graunt al Hen. 8. durant son vie, & mesme le
grant ad estre renew al E. 6. M. Marie, M. Elizabeth & al no-^{4.5.6.}
tre seignior le roy que oze est, durant lour seuerall vies, p
seuerall Actz de Parliament en Engleterre.

Mes icy en cest realm de Irelan, le subsidie de Pondage
au commencement en cest maner, Anno 14. Ed. 4. un fra-
ternite des Armes fut eret p acte de Parliament, constistant
de 13. plus honorable & loialment disposed persons en les
Counties de Dublin, Kildare, Meath, & Louth: Et un certaine
number des homes a chival, oue lour pages et des archers
a chival fuit assigoe a eux, oue certaine entertainment et
Gages, payable al chescun des ditz homes a chival, et ar-
chers. Autant freres des Armes, oue lour dit retinew s'ont
tous temps pris a defendre le English pale encont
Rebells et Outlaws. Et p l'payement des gages des ditz ar-
chers, & homes a chival, fuit enact, que les ditz freres des
Armes & lour successoires aueront, xij d. de le pound de tous
merchandises imported et exported, hors de cest Terre de
Irelan, Wides & Wines, & les merchandises del freemen
de Dublin & Drogbeda solement except.

Alors 10. H. 7. en le Parliament tenus p le Roi Edw. Poy-
ng, fait enact, que p tant que le dit xij d. de le pound grant
al St. George Fraternity (que es la appelle le Fraternity de S. George)
fuit encomend et conuert al mynt vies, et nemy en discharg
de publiche suice, p ceo le Roy aueroit le dit Pondage puc-
t, aussi ensuamt, et q toutz autres grants fait del dit Pon-
dage soient remale et adjuduge both, sc.
auant ditz 14. ans estant expirre, viz. Ansi 15. Hen. 7. nouel
pon-

payable pur Merchandises.

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Pondage fuit graunt per act de Parliament al dit Roy ses
heires et successors in perpetuity, oue un Prouiso, que cest
act ne ferroit prejudicial al freemen de Dublin, Waterford,
& Drogheda esteat free p Birth, Mariage, ou Preris hood, &c.
Et tllint le Roy ad estate de Enheritance en cest Subsidy
de Pondage en Ireland, ou il si ad ceo forsque duront son na-
tural vie en Engleterre.

3 Imposts ou Impositions sot l Tierre kind de dutiez pay-
able pur marchandises, & sont astunfoits rates & af-
fesse per Parliament, & donques sont en nature de Subsi-
dies, & aucun foit s sonc impose per Prerogatiue Royall, pur
supporter les necessary charges de la Corone, & donques,
Nihil magis justum est, quam quod necessarium est, come un
auncient Senatoz de Rome disloit.

Le Impost sur Wines in cest Realme fuit primetant af-
fesse p Parliament, & limit destre pay pur certaine terme d
ans. quel este ant expire, ceo est ore continue per prerogatiue
del Roy.

C Eux, sont les dutiez payable al Roy de Engleterre p
l exportation & importation de marchandises. Et co-
ment que cest reueneue del corone ad este grandement
improoue en cest darreine age, vnoce si les customes, subsi-
dies, & impositions d Engleterre sont compare al dutiez et
paitements de cest kind, en forein countries, serront troue de-
stre moderate & fort reasonable.

Les auncient Romaines(car cest reueneue payable hors d
merchandises, est le plus, auncient, honourable, et reasonable
que appertient al aucun Prince ou State) auoent ceux dutiez
p nosme d Vectigalia, a mercibus euectis, & inuectis, qut
l Empereur Justinian appelle Exagogica & Isagogica. Et tou-
chant la nature d eux, les rules de noistre ley sont agreeable
al ceut d la Imperiall ley.

1. Nous diomus, que custome est l ancient enheritan-
ce de la corone D'engleterre, tis diont, Vectigal origine
ipsius Cesarum, & Regum patrimoniale est. 2. En noistre
Ley, Wafrage & Protection de Merchants sur le Mer, est
vn des principall causez de paiment de ceux dutiez : et en
la Ley del Empire, Primaria Vectigal causa, ac ratio fuit

* C' estoit contra legem et
excedat le prerogative del Roy.
2. Juy: 58. p. f. (66.)

vt

Le Case de Customes.

ut plana, tutaque mercatori prætereunti itinera præstarentur. Et Plin.Lib. 19.c.4. Dicit, Merces prætiosæ, ut ex India, Arabia, Æthyopia, tuto à mercatoribus in Europam conueherentur, necessario classem parandam esse aduersus Piraticas incuriosines. Inde maritimi exercitus alendi causa, Vectigal Rubri maris institutum.

Et cest Vectigal, octaua rerum pars erat, & pur ceo, fuit un sort des Publicanes, queux fueront appell Octonarij: meg les Merchants queux auoient le privilege de citizens de Rome, paieront forsque vicesimam partem ou Pondage, & les Publicans ou collectorz de ces custome, fueront appell Vicesimarij.

Et ceo fuit le auncient custome payable per Merchants deus le estate del Empire. Et en Britanie, devant que cest Island fuit fait Provincie subiect al Empire, est credible que les Merchants payeront greindre Rates pur Exportation des commodities, que ils payont ore. Cat Strabo dit, Britanni Victigalia tollebant grauia carum rerum, quas in Galliam, tametsi breui maris trajectu, importabant.

Mes a cest iour, est certaine, que en auters Realmes de Europe, leg customes sont plus haut et heady que nos tres.

En Spaine, le Roy pris octauam partem de ses proper subiects, mes d' Merchants Strangers il pris ascu foits le cinque part, aucun foits le quart pt del value de lour marchandise.

En France, leg customes payable pur Strangers a mountaunt al huict de Cent. Bodin.de Republ.libr. 6.ca. 2. Mes les impositions & gabels q le Roy la pris de ses subiects, si Sel, Wine, & Blees, et toutes choses vendible, sont extraordinaire, et fort excessive. Illint poer est dit del grand Duke de Tuscany, & auters States de Italy.

Le grand seignior d' Turkie pris le tenth pt de Merchant Strangers, et le vint pt ou Pondage de ses subiects.

ofnes del customes.

Quant a les Officers queux ont a faire oue les customes.

1 Le customer fuit le pluis auncient, & al primez le sole Officer, que fuit le collector des customes, et accomptable p eux al Roy. 9.H.6.12.b. 1.H.7.4.b.

Apres

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Payable pur Marchandises

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2 Apres en aid de customer p trouver les concealements et subtractions des customs & subsidies, & p se iser marchandises foristed, le Searcher fuit ordaine.

3 Donhs p ceo que le customer fuit accomptant al roym ne puilloit estre charge forsq; p son proper luer o Councill, ou son eath controller fuit assigne a luy.

4 Darrainement, p discouer et punir les frauds o toutes ceut, un office de Superviso ad estre erect.

C Eux diversites touchant la nature de les several dutes payable pur marchandises, estant declare a autre, le 2, matter fuit consider, viz. Si les points de les severall charters plead, come auant est monstre, p le corporation de Waterford, soient sufficient warrantes a eux, de receuier, a lour proper bte, les dits customs & subsidies, & de faire les dits officers o customer, searcher, et controller des customs.

Q uant al primer charter de le Roy John, p que il grant al dit Corporation, Custumam vocatam Le Murage, de omnibus rebus venalib' infra dictam ciuitatem empatis seu venditis, adeo bene & integre sicut Burgenses viliz de Bristol habebant, &c. Fuit resolue, que per ceulz parolz nul custome ou subldie est grant a eux, pur diuers reasons.

1 Pur ceo que Murage nest rien que Toll, payable p preparation des Mures, hors de choses vend en Market oueret per retaile, N.N.Br. 228.d. ou custome est pay pur marchandises imported ou exported a travers le Mare, et vend en grosse. Et est auxy cest difference, que tolle convention estre pay tous ditz per testuy que Achate le chose, et custome per Merchant que vend le chose. N.N. Br. 228. e. Et quo Murage nest forsque Toll appiere per le Register, 159.2. En bref de Essendo quier, de Theoloneo. Et per l'Idem charter 3.1.E. 1. p que tous marchans stranges sont acquit o Murage, Damage, & Pontage, et bincois tis paide le grand et petit custome. Vide aussi le bu Wobbes塌e en le 8. part des Reports de le Seignior Cooke, 47.2.

2 Murage ne gis en grant, mes en prescription: car si come alcun choses ne gisent en prescription, ne pur grise.

G

come

22f. p le prim chart le
whors ne pur pur custome

Murage e toll et au pay
p le bref de

Customes

Le Case de M. le R. d'Angleterre.

come comisans de pleas, Catalla Felon. &c. 1. Henr. 7. 22. b.
9. Henr. 7. 20. 2. Ilzint sont autres choses que ne gillont
en grant, mes en prescription, come d'avoir free Barren en
autre terre, ou de prendre Murage, Pontage, ou Picage. 13.
Henr. 4. 14. b.

3 Le Reference al bill de Bristol, est uncertain et bold,
pur ceo que nest tel Ville ou Burgh appell Bristol, en
cest Realme de Ireland, et le Ville de Bristol entend en le
charter, estoant en Engleterre, le auement que les Bur-
gesses de Bristol avoient Murage al temps de cest Graunt,
ne poet estre try icy. Aupy s'ils doent auerre en leur plea que
les Burgesles de Bristol avoient tel certain Toll ou Cu-
stome de chescun chose vende & achate deins le Will, & que
s'ils avoient ceo per graunt del Roy, car donques le Refe-
rence fuisseoit al certenty. Come est tenus 20. Ed. 3. Fitz. A-
uowrie 120. En Quo warranto port en Cyee, bers Baillifs
& communaltie de Lancaster, s'ils pledont un charter du Roy
John, que graunt a eux tous franchises que le Burgh
de Northampton ad, et pur ceo que nul Franchise fuyt la
exposee, ou monstre de Record, seilure fuit agard des fran-
chises.

Wantal 2. Charter, y que H. 5. grant al Maior, Bai-
liues, & Citizens de Waterford, Custumam dictz ciui-
tatis vocat. Le Cocquett, capiendam per manus di-
cti Maioris & Ballivorum in perpetuum : et comment que fuit
obteint par le Attorney General, que le cocquett nest forsque
acquitance ou Bill testifiant que le custome est pay, que
fuit al primis appell Cocquett, pur ceo que per tel bill, le
Merchant est de costuma quierus : Per quel patol le sum-
cient custome, estoant un speciall inheritance de la copo-
ne, ne poet passer : et comment que fuit aupy obteint que
custome est payable per chescun general merchant Denisen
& Allen, et pur ceo ne poet estre dit Custuma dictz ciuitatis :
tantost obstant que soit limite desse passe per maynes del
Maior & Ballives, unques l'officer del roy, viz. le customer est
charge des ceo, s'ils doent auer allowance per petition,
come est rule 1. H. 7. 4. 2. ou R. 3. ad graunt Licence al cer-
tainne merchants a transporter laines, &c. Et de ceo de re-
tirer leur customes, en cest case, nient obstant l' dit grant,
affid leg

les Customes suront charge et accomptable par les customes.

Uncoes fuit resolute, que le antient Custome de woolis, woolfels, et hydes fuit bien grant al dit corporation per les paroys de Custome vocat. le Cocquett. Car cest antient custome est communement appellé, et conus, per nosme de le Cocquer Custome, en tous portz de Engleterre, & Irelad. Et custome dictæ ciuitatis sera entend custome payable pour marchandises in dictæ ciuitate. Car favorable interpretation sera fait de tels graunts solonque le usage et auctorite. 10.H.7.14.a. Et pur ceo que le custome est graunt al eux, ils poent ceo collecter per lour propre officer, et le officer del Roy nest accomptable pur ceo, come en le dit case de licence de retainer, 1.H.7.

Quant al 3. Charter dar' 12. Maij 3.H.7. p que le dit Roy grant al corporation de Waterford, quod omnes & singuli ciues & inhabitantes dictæ ciuitatis, & omnes & singuli mercatores, tam indigenæ, quam alienigenæ de Noua customa vocat, le Pondage, viz. de præstacione xij. denariorum de libra imperperuum sine quieti & exonerati, &c. fuit resolute, que cest charter ne fuit sufficent warrant al eux, de receveur, a lour propre use, le Pondage de tous marchants, denizens, et aliens, deins le Port de Waterford. Et ceo pur 2. principal reason.

Pur ceo que cest graunt tend al discharge de chescun particulaire Merchant, et ne dona le Pondage al corporation. 4.H.6.b.a. le Roy E.4. grant al Mayor et Burgesies de Oxford, que sis ne serront Jures oue foreiners, ne foreiners oue ceut, &c. Per totam curiam les Burgesies que sont impannell quant sis sont demand duire Jures, poent interroger le charter, et pleader ceo, mesme nemoy le Mayor et corporation : a mesme lenteur est 21. Ed. 4.55. & 56. Le case de Norwich. Et si ceo fuit dit que si le roy grante al Abbe que toutes ses possessions serront discharge du Dilmes gracie en Parliament (come le Rector de Edington case est 19. Hen.6.53.a.) Le Abbe en cest case, ne poet collecter les Dilmes de ses tenants, et retainer a son propre use : Illustre ou le Roy ad graunt al corporation de London, que les citiens de London serront discharge de Prisage, le corpora-

Le Case de Customies.

ration per force de cest graunt, ne prist le Pondage de les
citzens. Mes chescun p[re]cious home auera le benefit de le
charter, s'il voet demander ceo, autrement niente.

futur p[ro]bability au point a g[ra]nt
au temps de la rey

Cest graunt fuit fait Anno 3. Henr. 7. a quel temps le
Pondage que fuit graunt p[ar] Parliament Anno 14. Edw. 4.
al Fraternity de saint George, come deuant est monstre, fuit
en Esse. Mes apres, Anno 10. Henr. 7. cest grant al Frat-
ternity de saint George fuit repeale per autre act de Par-
liament, s' noul Subsidy de Pondage grant al Roy p[ar] 5.
ans. Apres quel temps, viz. 15. H. 7. un autre Subsidy
de Pondage fuit graunt al corone en perpetuity, que est le
Pondage oze en question, ilustre que le noul Pondage
que fuit grant per Parliament, 15. Henr. 7. ne puuoit estre
graunt ou discharge p[ar] charter fait, xii. ans deuant, viz.
3. Henr. 7. Car quaunt al Graunt en tel case, est tenuis
22. Edw. 4. Fitz. Graunts 29. en le Abbe de Walthams case,
que le roy ne poet grant aucun parcel del Dismes del Cler-
gie, deuant que soit graunt per le conuocation. Et quant
al exoneracion ou discharge en tel case, cest point en le
case de Rector de Edington, 19. Henr. 6. 63. a. Nost rule ne
resolute. Mes admitt que le Rector en cest case la serroit
discharge de Dismes per grant le Roy fait deuant le Par-
liament, bincore ceo ne serroit rule de cest case, pur ceo que
en le graunt fait al Rector sont poix de future temps, viz.
que quant aucun taxe, tallage, ou tenth serroit graunt per
Parliament que si les terres, & chateux serroient discharge.
Mes cest charter de 3. Henr. 7. parle de Noua Custuma
de Pondage doneques en Esse. Car ceo que est noul, est no-
uellement past et nemy future. Et pur ceo cest charter ne ha
en discharge de autre Pondage, que serroit graunt apres
per act de Parliament. A cest entent, vide 34. Henr. 8. Dyer 2.
52. ou est tenuis que le Roy ne poet discharge penaltie del
act de Parliament que est desbre fait en apres. Come ou
roy grant licence al un de transporter Bell Metall, nient
obstant aucun statut fait, ou desbre fait al contrary apres
act est fait, que prohibet le exportation de Bell metall sur
certaine paine: Le licence graunt deuant, ne dischargera
cest penaltie. Mes la est dit, que le Roy poet dispenser
une future chose en que il ad enheritance. Mes au temps
de cest charter graunt, viz. 3. Henr. 7. le Roy ne avoit en-
heritance

payable pur Merchandises.

15

heritance en le Subsidie de Pondage. Car le Pondage done-
ques in Esse fuit grant al dit Fraternitie de S. George, quel
grant esteant repeal, come est auantdit nouel Pondage fuit
grant al roys pur 5. ans, Anno 10. Henr. 7. Et apres Anno
15. Henr. 7. le Pondage, oze en question, fuit grant al roys et
ses heires per Acte de Parliament. Mes si le Roy ad eux
enheritance en cest Pondage al temps de cest charter grant
al Waterford, viz. 3. Henr. 7. le discharge, sans question, ad
estre bone. Come le Roy poer grant que l'heir de son tenant
ne sera en Gard, ou que son Tenant ne sera puny en
cessavit. Car comment que ceux sont futurez casuell choses,
huncore le Roy ad enheritance en le Seigniory al temps
36. Henr. 6. 4. 8.

Auxi en plusors cases, comment que graunt del Roy Ex-
tend al future Temps, huncor sera entend des chosez Preset
jen Esse al temps del graunt. Come in 38. Hen. 6. 10. 2.
Si le Roy graunt a moy libertes en tous mes terres,
leo auera les libertes en les Terres queur leo auoy al
temps del grant, et nemys en les terres queur leo purchase
apres. Istant si le Roy grant libertez en tous mes De-
mesnes, & apres Tenancy escheat, leo auera les libertez
en le terre nouvellement escheated. Istant si le Roy graunt
Catallis felonum quorumcunque, & apres y Parliament, un
act est fait Felony que ne fuit Felony devant, le grauntee
nauera les biens de person attainted de tel Felony. Istant
ou l'Evesque de Durham ad Iura regalia, & escheates de
Treason deins son countie Palatine, il nauera les terres
de Tenant en Castle attaint de Treason, queur sone for-
feite per le Statute de 26. Henr. 8. come est resolute, 12. El.
Dyer 289.

Et si ceo fuit resolute, que cest charter que exonerat les
Merchants de Waterford de Pondage, in Anno 3. Henr. 7.
ne poer este extende p acquitter eux de nouel Pondage que
fuit grant y Parliament Anni 15. Henr. 7. Mes q tousz Merch-
ants Denyzens et Aliens payeront Pondage en ce poe,
sousme ceul que sont exempt p le prouiso del dit Acte de
15. Henr. 7.

Quant al 4. charter, concernant les Officers des Cu-
stomes, fuit resolute que ou les customes et Subsidies
remanent

Le Case de Customes

remainont en la Cozone, & ne sont bien graunte al dit corps
popolation, le Roy mesme appointera les Officers pur le
collection et due answering de ceux Duties, nient ob-
stant cest charter, que enable eux de creater teliis Officers.
Mes en case ou custome ou Subsidie est bien grant al
corporation, abonques le constitution de teliis Officers
appertient a eux, a lour officers poent entremedier que
taunt que est bien graunt a eux, et nient plus, mes ou
lour charter va en discharge & exoneracion tantum, ilz ne
poent appointer teliis officers car ne sont necessarie en tel
case.

CEt case dependoit plusors Termes en Bank le Roy
Icy, ou les points auantdit fueront resolueans duant
ascun Judgement done en ceo, le dit citie de Wa-
tersford, & les autres Maritimes cities, et portz tolongs de
cest Realme, per speciall direction del Roy, transmittroient
en Engleterre certain Agents, ou leur several charters, al
entent que toutes questions queux ont estre mone touchant
les Customes & Subsidies payable al Roy pur Merchandises
lesen les severall Ports de Ireland, sur bieu des ditz
Charters per les Judges en Engleterre, poent estre re-
solues determinans auant fuit perent le Roy, & les ditz
Corporations.

Et sur ceo, Termino Michaelis & Iacobi, speciall letters
del Seigniorz de pray Counsell fueront direct al Sir Lau-
rence Tanfeld chefe Baron, Baron Heron, Sir Io. Doddrige
vn des Serjants del Roy, & Sir Henry Hobarte Attorney
general del Roy en Engleterre. Et aussi al Sir James Ley dom-
ques chefe Justice de Ireland, Sir Anthony Seintiger Master
del Rolls, & l'Attorney general del Roy en cest Realme icy:
(queux seruitorz de Ireland abonques fueront present en
Engleterre, & attendant al Court, pur dispach des autres
seruices) per queux letters le dit Chefe Baron, & les autres
fueront require, d'appeler devant eux les ditz Agents, &
sur perusal & consideration en de lour several Charters,
de certifie lour opinions & resolutions, en queux des ditz
Cityes & port Townes, les Customes & Subsidies payable
pur Marchandises doent estre respond a pay al Roy, ven-
quant les marchantes Denizeng, ou Aliens, doent estre dis-
charge

charge de paiment de ceulz dutis, & pur quant, &c.
 Et accordant a cest direction, les ditz Agents fuerent
 appoynt d'attender lez ditz Regeres, oue lour charters, et
 oue lour learned Councell, al Seignants Inne en Chan-
 cerie Lane, al plusors iours en le dit Michaelmas Termes:
 & la devant le Seignior chief Baron, et les autres, les
 questions et pointz auantdir, surdant sur les severall char-
 ters de Waterford, fueront moue, & debate, & resolute, ut su-
 pra. Et divers autres charters fueront produce, mesme nul
 point de difficultie fuit moue sur aucun de eur. Tant soi-
 ment, Bolton Recorder de Dublin, insistoit fortment, sur un
 antient charter del Henr. 2. p que le dit Roy ad grant Bur-
 gesibus de Dublin, Quod sint quieti de Theoloneo, Pannagio,
 Pontagio, & omni coniuetudine p totam terram nostram An-
 glia, Normannia, Wallia, & Hybernia vbiunque venerint
 ipsi & eorum Res, &c. Et il afferoit, que les parols de The-
 oloneum, & Consuetudo, fueront apt parols b acquitter les
 Citizengs de Dublin de le Graund et Auctient custome. Et
 pur le signification de le parol Theoloneum, il cite le Text
 en Saint Math. Ghospell, Cum autem prætergredierur Ies-
 sus, vidit quandam sedentem ad Theoloneum, &c. q est inter-
 pret destre al receipt del custome. Mes a ceo fuit dit, que pur
 trouer le signification de Theoloneum en cest case, ne be-
 soigne de resorter al interpreters del Ghospell; mesme al in-
 terpreters del nostre Ley. Et que en nostre ley, le pro-
 pre Termes ou Parol de Are que signifie tel Royall dutie
 que est payable pur Marchandises croissant le Mer, est
 Custuma, & nemys Theoloneum: quel parol Theoloneum, en
 nostre ley, signifierien lorsque un Toll, & Toll (que est De-
 rive del Theoloneum) nest lorsque un petty Duty paya-
 ble en Markets & faires, per cest que achate le chose, en
 Custome est payable p Marchant que est vendor N.N. Br.
 226.b. & p le Register, 260.a. un difference percentet Toll
 q Custom payable pur Marchandises appiert. Car en le
 breve d'acquitter les biengs del Ecclesiasticall person de
 Theoloneo, Pannagio, Munnagio &c. cest clause estimise, Nam
 tamen merchandises aliquas non exercitat de eisdem, illint le
 difference est apparent, & pur ceo il fuit ouer rule pur cest
 parol, Theoloneum, & non pur Consuetudo, q confit
 Quant al autre parol, Consuetudo, il dit, que ceo fuit

Nomen

*Arg: q' auctor chart p'
p'us b'riga x.*

Theoloneum q' n' autre ley.

(confit b'.

Le Case de Customes.

Nomen æquinoctium et ab 3. significations. 1. Usage ou temps dont memozy ne court, est appelle Consuetudo. 2. Antient usages et servitudes, sont appelle consuetudines. 3. Auxy les usages payable pur marchandises sont appelle consuetudines. Et ceo appertit in Magna Charta, ca. 30. Omnes mercatores, nisi publice antea prohibiti fuerint, habeant saluum & securum conductum, exire de Anglia, & venire in Angliam, & morari & ire per Angliam, tam per terram, quam per aquam, ad emendū, & vendendum, sine omnibus malis Tolnetis, per rectas & antiquas consuetudines Per quel parol consuetudines, il dit que les antient customes payable pur exportation de marchandises sont signifiee. En medme le sens (dit il) cest parol est vise en Bract. libz.ca. 24. Si cui concedatur talis libertas, quod qui-etus sit de Theoloneo & consuetudinibus dandis per totū regnum Anglie in terra & mari, & quod Tolnetum & consuetudines capiat, infra libertatem suam, de vendentibus & ementibus, statim erat quasi in possessione, & possessione retinebit, cum Tolnetum & consuetudines receperit.

Il montre auxy les copies de certain accompts, conteins en les antient Pipe-Rolls en Engleterre, viz. un de 15. Henr. 2. en ceux parolz, Geruasius Draper Vicecomes Northfolk & Suffolk reddit compotum de 45. l. 16. s. 6. d. de consuetudine navium de Oreford: & in magno Rotulo 5. R. 1. c. entry est troue, Albericus de Billingesgate debet 72. s. 4. d. de consuetudine de Billingesgate & Buttolphesgate, si que sconclude, que en antient temps, quant Henric. 2. felloit cest graunt, le parol consuerudo signifoit la dutie dei customes payable pur marchandises. Vnoze il agree, que a cest touz teli special duties de prerogative, come customes sont, ne poent passer per tiel generall parolle de consuetudines. Mesme auantien Grants ont touz sois un favorable interpretation, solonque le vilage & allowance. Et sur cest ground il nult plusologs luyers, 14. H. 6. 1. 2. Del grant fait p H. 2. 34. All. p. 1. 4. Del grant du Willy Conqueror, 37. Ass. p. 6. 40. Ass. p. 11. 1. 1. 2. 1. 10. H. 7. 1. 3. b.

General grant ne brake p.
gatzur flors del Roy.

Oues fait resolue per le Seignior chiese Baron, et les autres Befettes, que le dit Grant, que sis feront quicci de omni consuetudine, ne discharget eys de le grand custome. Et principalment, pur medme le reason, que alle ces del autre part, viz. pur ceo, que consuetudo est nomen
æquinoctium

payable pur Merchandises.

17

equinocum, & signifie plusors kinds de customes. Et il n'ent
estreant generall patou, ne unques passeront cest special royal
duty. Come ou le roy grant omnes piscarias, & pescationes,
royal fishings ne passont : Roy grant tousz Mynes, roial
mines de oz, & argent ne passont : Roy grant tousz Amer-
cements, roial Amercements ne passont, &c. Ed. 3. i iiz. 445.
presentement huit fait vers Abbe, que si ad suader un poche
eschuer que il a les predecessoys seigniorys del ville, ont bie
de reparier de temps dont memory ne court, &c. Le Abbe
plead charter del H. 3. destre quit de reparation de tousz
ponys, mireys, & cauleyes, & que cest charter ad estre alloue
en Q. warranto, &c. Uncore cest plea ne fuit allow. Car
ceo fuit speciall charge ou duty par raison de son seigniory,
que nest discharge par cest general clause. Car ou sont poche
en grant le roy, que deslouth un generall nosme, compres-
hend chases roial, & chosez base, sera pris en fauour del
roy, a les base chosez passeront, & les roial demureront
en le rozone, Plow. Com. 3 33.

Et le seignior chiefe Baron misoit un notable case a telle
purpose, adiudge en leschequer de Engleterre, que fuit tel.
Le roy ad grant al un Venetian marchant, que si serroit
quit De omnibus Custumis Subsidij, & impositionib' & om-
nibus alijs denariorum summis debitibus & solubilibus pro qui-
buscunque merchandisis importandis, &c. & q il serroit cy free
come les citizengs de London. Per colour de cest char-
ter, il clame destre free de Prisage, pur ceo que per speciall
charter les citizengs de London sont free de Prisage. Un-
core fuit adiudge que cest Grant del Roy ne dischargetoit
de Prisage, pur ceo que Prisage nest speciallly expresse en
misme le grant. Et sur mesme le realon fuit oye resolue par
le dit chiefe Baron, & les autres Roberres, sur le char-
ter de Drogheda, per que les Burgeses de cest ville sont
dischage de Theoloneo, Passagio, Pannagio, Lastagio, &c
que per force de cest parol Lastagio, ils ne serroint discharge
de Graund Custome de 13. s. 4. d. payable pur cheste
Last de Hydes, pur ceo que il y ad un Last de Hertings, et
Last de Dolwder, & de plusors autres choses cybien que de
Hydes.

Et admyraignut fuit resolute per le dit chiefe Baron &
les autres, que un subiect ne poet prescriber destre free &
discharge

Le Case de Customes.

discharge de le auctient custome payable pur marchandisez, ou de recevaer ces a son bte demesme, pur ceo que ceo est un certaine reuenue del corone, mes en autres chases que sene rauall, come vautif, Streay, vrocks, un quoynt poct prestribes.

Et apres ceo, viz. 16. Decembris 6. Iacobi, le duchesse Bacon & les autres Rolettes retournent al Seigniors del privy counsell en Engleterre un Certificat de lour opinion & resolution, ou, & en quel maner, les ditz auctient Customes & le poudage doent estre pay et respond al Roy, en les divers port townes del Ireland. A quel Certificate, les Agents pur les ditz ports townes submittent aux mesmes, devant les ditz Seigniors del conseil, et assiguent, que de hors senant, les ditz Customes et Poudage feront pay accordant. Et sur ceo, cest Certificate fait transmis en ces Realms, et encolli en le Eschequer ey, et accommode a eos, de puis cest temps, les ditz Customes et Poudage ont estre respond, et pay al Roy, en tous les portz de Ireland.

Trinit

ANNO REGNI ELIZABETHÆ REX BRITONIÆ ET HIBERNIAE MDLXXXIII



Trin^e. Iacobi.

Le Case de Mixt Moneys.

IA Roigne Elizabeth, put paier les gages del Army Royal que fuit maintaine en celi Realme pur plusors ans, a suppremer le rebellion de Tyrone, causant un graund quantite de Mixt monyes, ou le vnuall stamppe del Arms de Corone, & inscription de la royal stile, destre come in le Tower de London, & transmette ceux monies en celi Realme, oue Proclamation portant dat 24. Maij, ansi 43. De sa Raigne : per q̄ sa Majestie declare et establish ceulz Mixt monys, immideatement apres le dit Proclamation fait, destre le Loyall & currant money de celi realme de Ireland, & expellent command, que ceux monies sront issint vle, accept & repute, per toutz ses subiects, et auzs, vlatz aucun traffique ou commerce deins celi realm : & que si aucun pson ou psons refuseront de receiuer ceulz Mixt monies, solonque le Denomination ou valuation d'ceulz, viz. shillings & shillings, & les pieces de vi. v. p vi. v. & sic de ceteris, estant tenuz s' paient des ascuns wages, fees, stipends, ou debtes, &c. Ils sront punis come contemniers de la royal prerogative & commandement. Et al entent q̄ ceulz Mixt monies auoient le meilleur course et passage, fait ouster declare y mesme le Proclamation, que apres l' 10. iour de lune prochain ensuant toutz auzs monies q̄ux ont esté currat deins ce realm, devant le dit proclamation, sront decry & adnull, & estre come

Le Case de Mixt moneys.

come Bullion, et nemy come loyall & currant Money deins
cest Realme.

En Aprill, devant que cest proclamation fuyt publish,
quand le purc coine d'Engleterre fuyt currant deins cest
Realme, un Brett de Drogbed marchant, ayant achate cer-
tainne wares d'un Gilbert en London deuient oblige al dit
Gilbert en obligation de 200. l. sur condition que il payera
al dit Gilbert ses executors, ou assaignes, 100. l. sterling, cur-
rant & Loyall money d'Engleterre, a le Combe del Earle
Strongbow in Christ church, Dublin, al certaine iour auener:
quel iour happoit destre apres le dit proclamation, et esta-
blishment del Standard de Mixt monies deins cest realm: p
que, al dit iour et Lieu, Brett fist Tender del 100. l. en les
Mixt monies del nouel Standard, en pformance del condition
del obligation auantedit. Et si cest Tender fuit sufficient &
sauer le forfeiture del dit Obligation, & si le dit Brett oze
sur le change ou alteration des Monies deins cest Realme,
sera compeli payer le dit 100. l. en auter ou meilleur coine,
que en les Mixt monies, solonque le rate & valuation d'eux
al temps del Tender, fuit le question al Councell table, ou
le dit Gilbert esteant Merchant de London ad exhibit pe-
tition beng le dit Brett pur le speedie recouerie de son debt
auantdit.

Et pur ceo que cest fuit le generall Case del Realme, et
fuit auxy de grand importance en consideration et reason d
estate, Sir George Cary esteant donq's Deputie et auxy
Treasourer del Roy, requiroit les chiefe Judges esteant
del Prince Councell de conferer & considerer de cest case, &
de retournier a luy lour resolution touchant ceo. Queux sur
conference et consideration en luy toutz points del dit pro-
clamation, fueront resolute, que le Tender del dit 100. l.
en les Mixt monies, al iour, et lieu auantedit, fuyt bon et
sufficient en la Ley de sauver le forfeiture del dit obligatiō.
Et que Brett ne sera enforce al aucun temps apres, ni paier
auter Money en discharge de cest debt, horsques cest Mixt
monie solonque le rate & valuation que ceo auoit al temps
de Tender. Et cest resolution fuit certifie p' eux a le Seign-
eur Deputie, et le testificate enter en le councell Bookie.
Et en cest cas divers points furent considerer, et resolute.

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Premièrement fuit considerer que chescun commonwealth si besoigne d'auoir un certain Standard de moneys.

dras chose auoit
1 f monies est necessary.

Car nul commonwealth post vnes sans contractz, et nul contractz sans equalite, et nul equalite en contractz sans mony. Car cest q̄ en les premiers societez del monies. Permutation del un chose p̄ autre fuit bie, encorq; bie vost con fuit troué cumbersome, & le transposition et division des choses fuit troué difficult & impossible : q̄ p̄ ces money fuit trauail, cest p̄ facilitie de commerçer, q̄ p̄ redonner contractz al equalitez. Cum non facile concurrebat, vt cum tu haberet quod ego desiderarem, ego inuicem haberem, quod tu accipere velles : electa materia est, cuius publica & perpetua estimatio difficultatibus permutationi subueniret. Paulus libr. 1. ff. de Contrahendis Empt. Et p̄ ceo mony est dit Per Bodin, mensura publica, & Budelius li. 1. de re Nūmaria ca. 3. Dit, Moneta est iustum medium & mensura rerum commutabilium : nam p̄ medium monetæ sit omniam rerum, quæ in mundo sunt, conuenient & iusta estimatio. Et a cest entent Keble dit, 13. H. 7. fol. 23. b. q̄ chescun chose poet estre baune p̄ Argent, p̄ q̄ p̄ p̄ Argent il entend mony coined. Et le grand iudiciale del un etain Standard des monies et des meaures, p̄ bien monstre p̄ Budelius en cest vers.

Vna Fides, Pondus, Mensura, Moneta sit una,
Et status illæsus totius Orbis erit.

Secondement fuyt resolute, que appertient solemment al Roy D'engletterre, de faictz ou cogitez monay de Engleterre dominions, tressint que nul autre person poet ces faictz, sans special licence ou commandement del Roy. Or si quelcun prelame de faire ces de son Telle domesme, ou de Telle autre le person del Roy p̄ le commun Roy. Or ces appert per le statute de 25. Edw. 3. cap. 1. que est Engle declaration del commun Ley, q̄ p̄ Glannil, Britton, & Brizo devant cest Statute, Stamford. fol. 2. & 3. q̄ en le cas de Apines, Plow. Comyns. fol. 316. q̄ cel poete estoit appelle plus cleerement, ou est die, que le Roy auera les Mines d'Or & Argent : car si le faitz estoit, si p̄ le Roy, il poet cogitez telle spettee, nemettez p̄me, ou banni des

2. q̄ à la force de faire monay
al contraire p̄ son p̄ autorité
del Roy.

D

cap.

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eur ; car appertient al Roy solement de metter value al
poinz & faire le poinz del quantite, & de metter print al ceo :
le quel estant fait, le coine est currant , & si subiect ceo fait,
ceo est grand Tresor al commandery , come appert, 23.
A. p. 2. Et es grand Tresor al Roy, p ceo que ti ad sole
pouvoe de faire money.
*General chies necessarie al fayre
de monoy loyall.*

En celx liurez 2. choses sont expresse, queux sont requisite
al selans de loyall mony, viz. Authority del Prince, l print
et le value. Des sun la consideration del case en question,
sunt note et obserue, que 6. choses ou circumstancies doent
concurre, a faire Loyall & currant money, 1. weight, 2. fine-
nesse, 3. impression, 4. Denomination, 5. Authoritie del
Prince, 6. Proclamation. Car chescun piece de money doet
auer un certaine proportion de weight ou poiz, et un cer-
tain proportion de purite ou finenesse, que est appell Alloy.
Auxi chescun piece doet auer un certaine forme del Im-
pression, que sera cognoscibilis & discernibilis car sicome
cette nest Seale sans print, issint mettall nest money sans
impression. Et Moneta dicitur a monendo, quia impressione
est moneta cuius sit moneta. Cuius imago & superscriptio est
hic : Casarii & dñe Cesari que sunt Casarii. Auxi chescun
piece de monoy couent auer denomination ou valuation p
quant ceo sera accept ou pay, come per un penny, un groat,
ou un shilling. Et tout ceo couent estre fait per authoricte
& commandement del Prince, car autrement le money nest
Loiall, & doet estre publis p proclamation del Prince, car
deuant ceo, le money nest currant.

Item circumstancies apearont en les ancient Ordina-
gements fait per le Roy, pur le Coinage de moneys, cibien
comme Royal, que en Engletere, queux sont destree trouue
ende Tower de London, & en le castle de Dublin icy. Auxi
les indentures entre le Roy & les Maistres del Mint, p-
tientant la proportion de poiz, finenesse, & alloy, & impression
et description, le nomme & le valmy vid. Stat. 2. H. 6. cap. 1. ou
mention est fait de ceut Indentures, vid. au p Wades case
en les parties Reports de le Seignior Coke, v. 4. b. si le roy
nous proclame p est faire aucun Coigne Loiall mony de
Engletere : a fortiori, il poet, per son proclamation tantum
estabilis le Standard des monies coined per son authopie
nominata regale dominiong, & l'assistera a faire assygnation

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Et que le roy g son protogatine poët auxy metter partie
auz statut sur tousz roisnes, approué par un notable conseil,
29. Edw. 3. fol. 60. b. En temps del William le Conqueror,
le abbé de Saint Edmunds Bury complainoit aleoy en gaignement,
que ou il fuit exempt del jurisdiction del Ordinarie
per divers auctiuent charters, que le evesque de Norwiche
ad vist son meason encounter ceut charters & exemption.
ques que fuit grant et valdans in Parliament, que si de cel
temps en avant, le evesque de Norwiche ou aucun de ses suc-
cessors alassent encounter le exemption auuendit, que ils
payeront al roy, ou a ses heires, 30. Talences ou Besaunes.
Apres ceo, viz, en temps Ed. 3. Le evesque de Norwiche bi-
stola meason auero, encounter le ordinance auantdict, & cest
contempt estant troué en Banke le roy, Scire facias fuisse
vers Leuesque a monstreer h que si ne payeroit al roy les
gros Talences ou Besaunes. Et que insuffisent plea plead per
Leuesque, le court agaed que le roy recourea les Talences
ou Besaunes, et que la cause soit intercepç y le roy mesme de
quel prize ils seroient quls ou moins. Per que est manifest
que ou Talences ou Besaunes ou autres tels pieces ou quali-
tites & d'or ou Argent, sont de incertamine value / cat Budens dit, quod Talenta sunt varia, & pondera sunt, potius quam
numiroata. Le roy mesme ad pouer de mettre certaine value
sur eux : solonque le rule bien conus al ciuilium Monete
estimationem dar, qui cudendi potestarem habet. Et en cest
point la common ley d'Englettere agre bien que les rules
del ciuil ley, lus cudenda Monete ad solum Principem, hoc est,
Imperatorem de lure pertinet. Monetandi Ius Principum ob-
sibus inheret. Ius monetae comprehenditur in Regalibus, que
tuoquam à Regio sceptro abdicantur.

Alueope par auctiuent charters, cest privilege ou protoga-
tine ad estre communicato al ascuns subiects en Englet-
tere : come al Archeneique de Canterbury por charte del
roy Athelstan Lamberti per amb. Kanc. fol. 291. Et Larch-
esterie de populo, & evesque de Durham auctor minter,
por le roignes mondes, come approué q le Statute de
14. Edw. 8. cap. 1. que le Deane de Saint Martins le Grand ou
mesme le privilege, come est manifest por le Statute de
17. Edw. 4. cap. 1. Et cest lus cudenda monetae subiecte qm
al plusoz & graundz personages en France, en temps pa-

l'abord del roy de mort
valens.

subject ont corps p chart

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emant, come Choppinus vocit lib. de Domina Franc. fol. 315. a. Et cypriogaine a cest tout, est chose trop generallement a toutes l'infiorz p'monies et staties de Germany, per g'me ou permission del Empereur. Car cest un lez des Comptes, los custende monies, nifi c'us ab Imperatore concessum fuerit, nem o/surparo si emp. a rois des rois, ou autres, ou autrez, a lais auz rois, ou autrez, ou autrez, ou autrez.

change fait de monoy x
Tercement fuit resolue, que dicome le roy q son prerogative poer faire monies de q' mattre & forme luy p'sette, il poer de establecer le standart de ces, ilme poer il changer son money en substance, & impression, & enhauener ou abaisser le value de ceo, ou tout ou partie de ceo & adoucier ceo, ilme que tout souigne Bullion, a son pleasure. Et nota que Bullion, qng dicitur latine, Billio, est moneta de ferme & prohibita, qua videlicet, vsu carer.

Ce que le Roy ad vse cest prerogative en Engletotte, appiert per plusoz notozous changes del Money, fait en temps des divers R'yes depuis le Norman conquest Anno 96. Hen. 2. Moneta veteri reprobata, noua successit. March. 1 Paris hist. mag. fol. 35. a. Anno 7. Iohannis nouel money fait, coigne, a quel temps le p'mier Sterling money fuit fait soionque le opinion de Camden, ou si parle de sterling castle en Scotland. fol. 706. b. An. 32. Hen. 3. le roy fuit enforez de faire nouel Money, cum moneta Angliae circumcidiebatur a circumcisio Iudeis, come March. Paris dit, fol. 703. a. Anno 7. + Edw. le standart del Monies fuit tenet, quant le sterling penny fuit establish de contemes vicefimam partem vncie, come appert en veteri magna Charta, en le ordinance appell Compositio mensurarum, ou est ordene, quod viginti denarij faciant vnciam Anno. 29. Edw. 1. quant les moneys appell Pollardes fuerunt detrie, nouel sterling mony fuit atq' caine, vide 6. Ed. 6. Dier 82. b. & lib. Rubro Scaccarij Dublin, part 2. fol. 1. b. Apres ce nouel monies ont estre fait, 9. Ed. 3. & 13. 6. H. 4. & 5. Ed. 4. & 19. H. 7. & 36. Hen. 8. Et de cez temps 15. Elizabeth, quant toutes mixt et base Monies furent detrie, il le standart de pure Silver establish, que consistit nez tout, de que Bodin fait honorable mention lib. 6. de Republica cap. 3. & 2. et son foliation 10. 11. 12. 13. 14. 15. 16. 17. Ensemble ceulz changer de Monies en Angleterre furent fait per le authoirite del roy sans Parliament, come que

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que plusors acts de Parliament ont estre fait, p' ordeneing
del eschange, & a prohibiter le expozation des Monies fait
est a ordameys p' le roy, & le importation & bretterance de fo-
reine & faus monies, que certaine paines & penalties, dont
ascuns furent capitalles, & ascuns pecuniary. Et plusors
ordinances del roy fait sans Parliament, sont appell statu-
tes, come Statutum de moneta magnum, & statutum de mo-
neta paruum, q' sont issint nosme statutes, p' ceo, que le ordi-
nance del roy oue proclamation en tel case, ad le force del
act de Parliament.

Et siconme le Roy ad vse de Changer le standardde des
monies, celsa sconvoit le forme & le substance, issint ad il vse
per la p'rerogative de enchanter ou aboyer le valuation de
ceo, nient obstant que le forme, & substance continue come
il fuit devant. Et ceo fuit fait, p' Ed. 4. come appert p' le
liver de 9. Ed. 4. fol. 49. 1. ou Danby dit, que ha nobis alme-
lioq. op. que il fuit Anno 20. de celi roy, 20. 6. en chesci no-
ble : p' le roy H. 8. p' special commission Dec. 14. Julij, 20. 1. 2.
de son raigne, authorise le Cardinal Wolsey que le admis
des autres del Counsell del Roy, de mainten valuation fuz
touts monies de Engleterre, de temps en temps, solennellement
les rates & values des monies de sopeine nations, q'z fuz
ront adonques trop engrangiez, specialment p' le Empereur, &
le roy de France, co'e est expellee en le dit commission. Vide
auxy 6. & 7. Ed. 6. Dier 8. & 8. Dier 8. & 9. tates sur imbal-
lement des Monies.

le Roy enhaunge la value de
ses hoy de

Et est destre note que en le an, 36. H. 8. quant plusors
sorts de base monies fuerent coigne en Engleterre, p' 2. Eliz.
quant le pure standard des lliuer monies fait estableilli, ilz
ad 3. notorious fallies ou decries de base monies publicly p'
proclamation : le premier. 9. Julij 5. Ed. 6. le second 17. Au-
gusti secund anno, come est expellee en Dier 8. & 9. tates, 18.
September. 2. Eliz.

Et siconme le Roy ad toutes foiz vse de faire & changer
les monies de Engleterre, il ad auty vse mesme le p're-
rogative en Ireland toutes temps depuis le 12. an del Roy
John, qu'le p'rimer standard des English monies fuit es-
tabliish en celi Realme : come est record Per March. Parlamen-
ta na hyst. fol. 320. b. ou il dit, que cest Roy eschent in Ireland
confi-

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constituit ibidē leges & cōsuetudines Anglicanas, pōens ibidē Vicecomites, aliosque ministros, qui populu regni illius iuxta leges Anglicanas iudicarent. Praefecit autem ibidem Iohanni de Gray Episcopū Norwicensem Iusticiarum, qui denarium terre illius ad pondus numismatis Angliae fecerat publicari, & tam obulū quā quadrantem rotundū fieri præcepit: iussit quo que Rex, vt illius moneta vsls tā in Anglia quam in Hibernia communis ab omnibus haberetur, & virtusque regni denarius in thesauris suis indifferenter poneretur.

Per que appiert, que le Standard de monies en Engleterre en Ireland fuit equall al p'mes, & que le English money fuit vn quart part melior in value que le Irish, come ceo ad este depuis le temps del Edw. 4. Car devant, s'coups fuit vn mesme Standard de moneys en ambideux Realmes, s'illint toutes foits quant le money fuit change en Engleterre fuit auxy change in Ireland cōe en le an 1279. viz. p's Edw. 1. quant le d.w. 1. establissh nouel mony en Engleterre, come devant est monstre, fuit auxy mutation des monys en Ireland, come est noate en les Annals de cest Realme publish per Camden en son liuer de Britannia, ou est dit, que Anno 1279. Dominus Robertus de Vfford iusticiar Hyberniz intrauit Angliā, & constituit loco fratrem Robert de Falbourne Episcopum Waterford, cuius tempore mutata est moneta. Illint 39. Edw. 1. quant per speciall ordynance del Roy les Pollards & Crockards fues decrie & abnul, mesme le ordynance fuit transmitt en cest Realme, & entoil en le eschequier ioy, come est troue in libro Rubro Scaccarij hic part. 2. fol. 1. b. auxy en les Annals abantdit, est note en mesme le an, Numismata Pollardarum prohibetur in Anglia & Hybernia, et non in Irlanda.

Et s'coule le Standard des monys fuit equall, s'illint les monys, coinage en cest realme fuit ordre & gouverné en mesme le maner come en Engleterre, come appiert p le account del Druncie & Andrew de Speidsholt maistres del eschange al Dublin, p. 1. Edw. 1. in Archivis Castri Dublin, & in libro Rubro Scaccarij hic part. 2. fol. 1. Et Rot. Parliament. in Castri Dublin, 12. Edw. 4. cap. 80. Vide auxy plusloz ordynances la touchant le monys monys, 7. E. 4. c. 9. 10. Ed. 4. c. 4. 11. Ed. 4. c. 1. 12. Ed. 4. c. 1. 13. R. 3. c. 7.

Mes

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Mes le premier difference et inegalite entre les standartes del english Monies , et Irish Monies, est troue en 5. Edw. 4. Car donques fuit declare en Parliament icy, que le Noble fait en temps Edw. 3. R. 2. Hen. 4. Hen. 5. & H. 6. serroit de cest temps en avant eurant en cest Realme, pur p. s. & issint le deny Noble, & toutes autres coines folonys mesme le rate vide Rot. Parliament, 5. Edw. 4. cap. 40. & 11. Edw. 4. cap. 6. & 15. Edw. 4. cap. 5. In le office del Roiles in Castro Dublin, Apres quel temps, le Money fait in Ireland, ou p Ireland, fuit tous faitz meinder in valuation que le Money de engleterre, & le vnuall proportion del difference fuit le quart part tantum, viz. le Irish shilling fuit forsque 9. d. del engleterre vide le Proclamation auantdit, dat. 24. Maij. 43. Eliz. enrol en le Chauncey top, ou la Roigne fait mention de cest difference faire per les progenitors entre le Standard des monoyes fait pur celi Realme, & les monies D'engleterre. Erroia que ces que est appelle Standard del monoy en cest case, est mesme ceo que est appelle p. Princeps Pied de monoy, q Bodin, P. monetaum, quasi Princeps ibi pede p. figuraient sicut si; & establish le pois & purity del monoy en tu certaine proportion, que ne sera transgrede per les moniers.

Et issint esmanifist, que les Royes de engleterre ont toutfoits esto & exercise cest prerogative de coiner, & changer le forme, & quantite trouant expedient, de emhancer & abaser le value de monies, deins lour dominions. Et cest prerogative est allowe & approuue non solesme p le common ley, mes auxy q les rules del Imperiall Ley. Badelius de re numaria libr. 1. cap. 5. Princeps ad arbitrium suu, irrequitato assensu subditorum, valorem monetarum constitutre potest, quia populus, quantum ad hoc, omnem potestate & iurisdictionem in Principem seu Imperatorem translusse dicitur. Et paulo post en mesme la charter, comment que asteung, DD. sont de opinion, Princeps sine affectu populi monetam mutare non posse, sed copie conclude. Si Princeps consuetudinem mutare monetarum auctoritate proprii, sine consensu populi, a reporte, cuius initio memoris non existit, tunc liberte impunitus in hoc facere posse. L. hoc dare paragm ductus aquae. ff. de aqua quotidiana. &c. Et Courtaunias lib. de collatione veteris numismatis, esp. de mutatione

such money arivt at a port
of plus baſe q̄ the money
of Anglor.

Standard & monies